

EXHIBIT E

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92066369
Party	Defendant William H. Howard DBA The Ebonys
Correspondence Address	WILLIAM H HOWARD 104 S GLENWOOD AVE ALDAN, PA 19018 UNITED STATES Email: whoward123@comcast.net
Submission	Motion for Summary Judgment Yes , the Filer previously made its initial disclosures pursuant to Trademark Rule 2.120(a); OR the motion for summary judgment is based on claim or issue preclusion, or lack of jurisdiction. The deadline for pretrial disclosures for the first testimony period as originally set or reset: 10/06/2017
Filer's Name	Moshe D. Lapin
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Signature	/MDL/
Date	08/07/2017
Attachments	THE EBONYS Motion for Summary Judgment with Exhibits.pdf(5804342 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

)	
)	
David S Beasley)	
)	
Petitioner,)	
)	
Vs.)	Cancellation No. 92066369
)	
William H. Howard DBA The Ebonys)	
)	
Registrant.)	
)	

**MOTION FOR SUMMARY JUDGMENT
BASED UPON
RES JUDICATA AND COLLATERAL ESTOPPEL**

Pursuant to Rules 56 of the Federal Rules of Civil Procedure and Trademark Trial and Appeal Board Manual of Procedure (“T.B.M.P.”) 528, Registrant William H. Howard (“Registrant”) hereby moves the Board for an order DISMISSING the Petition for Cancellation in favor of Registrant based on Res Judicata and Collateral Estoppel.

A Motion for Summary Judgment is generally improper prior to disclosures. However, because the basis for this motion is issue and claim preclusion, this motion is timely filed. *Unrock Network, LLC v. Sulpasso*, 115 USPQ2d 1409, 1410 n.5 (TTAB 2015) (motion to dismiss considered as one for summary judgment where it asserts claim preclusion); *Compagnie Gervais Danone v. Precision Formulations LLC*, 89 USPQ2d 1251, 1255 n.7 (TTAB 2009) (“if a party moves for summary judgment prior to the deadline for making initial disclosures it should indicate in its motion that the disclosures have been made, or are not required because the motion

seeks judgment on claim or issue preclusion or on a jurisdictional issue”); *NH Beach Pizza LLC v. Cristy’s Pizza Inc.*, 119 USPQ2d 1861, 1862 n.1 (TTAB 2016) (construing motion to dismiss filed in lieu of answer as motion for summary judgment on issue preclusion).

I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

Petitioner’s Petition for Cancellation in this Cancellation No. 92066369 (the “Cancellation Petition”) should be dismissed because the claims and issues raised in this proceeding have already been fully and finally adjudicated against Petitioner. The Petitioner has already had his day in court – and lost. The instant Cancellation Petition raises the same issues and claims that were (or should have been) previously raised in *David S. Beasley v. William H. Howard DBA The Ebonys*, Cancellation No. 92057071 (hereinafter the “Prior Action”).¹ The parties in this proceeding are *identical* to the parties in the Prior Action; the trademark at issue here is the *identical* trademark at issue in the Prior Action; and the issues and claims raised in this proceeding are identical to those issues and claims that were (or should have been raised) in the Prior Action.

Attached as Exhibit A is the Boards final decision in the Prior Action; attached as Exhibit B is Petitioner’s Amended Petition in the Prior Action; attached as Exhibit C is the evidence submitted by Petitioner in the Prior Action; attached as Exhibit D is Petitioner’s “Motion for Cancellation” in the Prior Action; and attached as Exhibit E is Petitioner’s final brief in the Prior Action. All the exhibits are incorporated by reference, and all contain evidence directly relevant to the question of claim and issue preclusion, especially to the scope of the “transactional facts”

¹ Registrant requests that the Board take judicial notice of the documents of record in the Prior Action. *Ambase Corp. v. City Investing Co. Liquidating Trust*, 326 F.3d 63, 72 (2d Cir. 2003) (taking judicial notice of court records to determine res judicata effect of earlier action); *Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991) (“[C]ourts routinely take judicial notice of documents filed in other courts ... not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings.”); *Rene v. Jablonski*, 2009 WL 2524865, at *8 (E.D.N.Y. Aug. 17, 2009) (“Furthermore, in evaluating the res judicata effect of a prior action, ‘courts routinely take judicial notice of documents filed in other courts, again not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related findings’”).

in the Prior Action. The exhibits clearly show that the claims made by Petitioner in this proceeding arise from the same transactional facts alleged in the Prior Action.

Unlike issue preclusion, the doctrine of claim preclusion is also available where a claim *could have* been raised in the prior action. See *Pactiv Corp. v. Dow Chem. Co.*, 78 USPQ2d 1939, 1941; *Urock Network, LLC v. Sulpasso*, 115 USPQ2d 1409, 1412 (TTAB 2015) (claim preclusion extends to relitigation of “claims that were raised *or could have been raised* in an earlier action” (quoting *Allen v. McCurry*, 449 US 90, 94 (1980) (emphasis added)); *Bacardi & Co. Ltd. v. Ron Castillo, S.A.*, 178 USPQ 242, 244 (TTAB 1973); see also *Vitaline Corp. v. General Mills Inc.*, 891 F.2d 273, 13 USPQ2d 1172, 1173-74 (Fed. Cir. 1989). see also *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 77 n.1 (1984) (“Claim preclusion refers to the effect of a judgment in foreclosing litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit.”); *Aspex Eyewear Inc. v. Marchon Eyewear Inc.*, 101 USPQ2d 2015, 2020 (Fed. Cir. 2012) (“claim splitting is forbidden by the principles of res judicata.”); *Perma Ceram Enters. Inc. v. Preco Indus. Ltd.*, 23 USPQ2d 1134, 1138 (TTAB 1992).

Even if a cause of action raised in this proceeding was not raised in the Prior Action, there is no genuine issue that Petitioner’s claims in this proceeding are based on the same transactional facts as, and could have been litigated in, the Prior Action. Accordingly, claim preclusion applies to all the claims made in this proceeding. See *Sharp Kabushiki Kaisha v. Thinksharp, Inc.*, 448 F.3d 1368, 1370 (Fed. Cir. 2006) (where second claim is based on the same transactional facts as the first, claim should have been raised in the previous proceeding). Moreover, the Board already ruled in the Prior Action that “[s]ince no other grounds were pursued nor pleaded with particularity, we consider any such grounds to have been

waived.” TTAB Decision in *David S. Beasley v. William H. Howard DBA The Ebonys*, Cancellation No. 92057071, Footnote 2.

Now, after Petitioner was soundly defeated in the Prior Action, he is attempting to breathe life back into this Cancellation. As Chief Judge Alex Kozinski of the Ninth Circuit Court of Appeals recently stated, “At some point, litigation must come to an end. That point has now been reached.”² That sentiment applies with powerful force here. As the law and common sense dictate, this Cancellation proceeding must be dismissed.

II. FACTUAL AND PROCEDURAL HISTORY

On April 18, 2013, in the Prior Action, Petitioner filed his first Petition for Cancellation of the identical registration at issue here, also against the identical Registrant William H. Howard DBA The Ebonys. In his Petition in the Prior Action, Petitioner alleged a range of grounds for cancellation, including the fact that “William Howard is not a [sic] original member or on any original recording of the Ebonys singing/performing group that was formed in 1969. William Howard should not perform or record under this name. (The Ebonys/Ebonys).” After the Board notified Petitioner that the Petition did not conform with the TTAB requirements, Petitioner filed an Amended Petition to Cancel on July 8, 2013 (the “Amended Petition”). See Exhibit B. The Amended Petition set forth the following allegations:

1. The Ebonys were formed in 1969 by David Beasley/petitioner and consist of three vocalists including himself; James Tuten (deceased) Clarence Vaughn and Jennifer Holmes.

2. The Ebonys were officially signed with Assorted Music Records dba Philadelphia International Records in January 1971 and continue to receive quarterly royalty statements.

² *Facebook, Inc. v. Pac. Northwest Software, Inc.*, 640 F.3d 1034, 1042 (9th Cir. 2011).

3. Registrant was not and is not an original member or performed on any original live recordings of The Ebonys singing/performing group.

4. David Beasley/petitioner registered “The Ebonys” with the State of New Jersey as Class 041 in 1997.

5. David Beasley/petitioner continues to manage goods and services involving the name “The Ebonys”. David Beasley/petitioner manages entertainment services in the nature of live performances by vocalist; entertainment in the nature of vocal music groups; and live performances by musical groups.

6. David Beasley/petitioner never relinquished in writing or verbally his rights of the “The Ebonys” name to registrant, any other individual and/or group to provide profit to themselves for services or goods.

7. David Beasley/petitioner continues with on-going projects as an original member/owner of the “The Ebonys”.

Id. The allegations were further developed by Petitioner in its evidentiary submissions in the Prior Action (see Exhibit C) and in its briefs (see Exhibits D and E).

In addition to alleging the above listed facts, the Petition also alleged in the Amended Petition that Registrant committed “fraud in in procuring a trademark registration occurs when an applicant knowingly makes false, material representations of fact in connection with the trademark application.” *Id.*

In the Prior Action, Petitioner, in addition to other evidence, submitted a state service mark registration issued by the State of New Jersey for “The Ebonys,” listing Petitioner as owner, with the filing date listed as March 7, 2003; a Management contract between

Petitioner, as “Owner of The Ebonys,” and Forrest Finney and Michael Mackintosh, dated October 1, 2007; and a flyer advertising a concert by Ebony’s Revue. See Exhibit B.

On December 9, 2014, the Board, after reviewing the pleadings and evidence, dismissed the Petition for Cancellation. See Exhibit A.

Two and half years after the Board dismissed Petitioner’s Prior Action, Petitioner again filed a Petition for Cancellation against Registrant on the same trademark on June 28, 2017. The grounds for cancellation are again identified as fraud on the USPTO, the same issue and claim raised in the Prior Action which the Board reviewed and dismissed. Paragraphs 10 through 18 of the instant Petition for Cancellation are allegations relating to the fraud issue – already decided by the Board in the Prior Action.

Though not listed in his coversheet, Paragraphs 1 through 9 of the instant Cancellation Petition allege that the trademarks are confusingly similar. Comparing the allegations in the instant Petition with the Amended Petition and evidence submitted in the Prior Action, it is obvious that there is no genuine issue that claims made in the instant Petition are based on the same transactional facts as those raised previously, and should have clearly been raised in the Prior Action. Petitioner is merely calling the same thing by a different name. “Claim preclusion, where found, operates to bar subsequent assertion of the same transactional facts in the form of a different cause of action or theory of relief. Generally, this principle rests on the assumption that all forms of relief could have been requested in the first action.” *Young Eng’rs, Inc. v. United States ITC*, 721 F.2d 1305, 1314 (Fed. Cir. 1983); *Aspex Eyewear Inc. v. Marchon Eyewear Inc.*, 101 USPQ2d 2015, 2020 (Fed. Cir. 2012) (“claim splitting is forbidden by the principles of res judicata.”).

The Board's language in its *Orouba Agrifoods Processing Company v. United Food Import* (Cancellation No. 92050739) decision just as easily could have been written about this case:

Finally, there is no genuine issue that petitioner's claims in this proceeding are based on the same transactional facts as, and could have been litigated in, the prior opposition. Indeed, the prior opposition, like this proceeding, is based on petitioner's allegations of ownership and use of [its trademark]. Here, while the grounds for the prior opposition did not include priority and likelihood of confusion, false suggestion of a connection or misrepresentation of source, **all of these claims are based on the same facts alleged in the opposition, perhaps with slightly more detail.**

Id. (Emphasis added).

III. **LEGAL STANDARD**

A party is entitled to summary judgment when it has demonstrated that there are no genuine issues as to any material fact, and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Coro. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986).

The Federal Courts and the TTAB have recognized that "summary judgment is a salutary method of disposition designed to secure the just, speedy and inexpensive determination of every action. *Sweats Fashion Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1562 (Fed. Cir. 1987); see *Turner Entm't Co. v. Nelson*, 38 U.S.P.Q.2d 1942, 1944 (TTAB 1996) ("the purpose of summary judgment is one of judicial economy, that is, to save the time and expense of a useless trial.").

IV. **CANCELLATION PETITION IS BARRED BY CLAIM PRECLUSION**

A. **Res Judicata – Relevant Law**

The doctrine of res judicata or claim preclusion serves to preclude a party from relitigation of the same claim in a subsequent proceeding involving the same parties based on entry of a final judgment "on the merits" in a proceeding, **even if the prior judgment was a result of a default or consent.** See *Lawlor v. Nat'l Screen Service, Corp.*, 349 U.S. 322, 75 S.Ct.

865 (1955); *Chromalloy Am. Corp. v. Kenneth Gordon, Ltd.*, 736 F.2d 694, 222 USPQ 187 (Fed. Cir. 1984); *Flowers Indus., Inc. v. Interstate Brands Corp.*, 5 USPQ2d 1580, 1583 (TTAB 1987).

For the doctrine of res judicata to apply, there must be (1) the same identity of parties or their privies for the first and second claim; (2) the second claim must be based on the same transactional facts as the first; and (3) a final judgment on the merits of the prior claim. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327 n.5 (1979); *Jet, Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 1362 (Fed. Cir. 2000).

It is critical to note that, unlike collateral estoppel which requires a final judgment on each issue to which collateral estoppel will apply, res judicata does ***not*** require a final judgment on every claim subsequently made. Rather, there must have been “a” final judgment in the previous proceeding. The previous judgment will then preclude ALL claims that **could have been raised, even if they were not**, in the prior action See *Perma Ceram Enters. Inc. v. Preco Indus. Ltd.*, 23 U.S.P.Q.2d 1134, 1138 (TTAB 1992); *Young Engineers, Inc. v. U.S. International Trade Commission*, 721 F.2d 1305, 1314 (Fed. Cir. 1983) (“issue preclusion operates only as to issues actually litigated, whereas claim preclusion may operate between the parties simply by virtue of the final judgment”); *Pactiv Corp. v. Dow Chem. Co.*, 78 USPQ2d 1939, 1941; *Urock Network, LLC v. Sulpasso*, 115 USPQ2d 1409, 1412 (TTAB 2015) (claim preclusion extends to relitigation of “claims that were raised *or could have been raised* in an earlier action” (quoting *Allen v. McCurry*, 449 US 90, 94 (1980) (emphasis added))); *Bacardi & Co. Ltd. v. Ron Castillo, S.A.*, 178 USPQ 242, 244 (TTAB 1973); see also *Vitaline Corp. v. General Mills Inc.*, 891 F.2d 273, 13 USPQ2d 1172, 1173-74 (Fed. Cir. 1989). see also *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 77 n.1 (1984) (“Claim preclusion refers to the effect of a judgment in foreclosing litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit.”); *Aspex Eyewear Inc. v. Marchon Eyewear Inc.*,

101 USPQ2d 2015, 2020 (Fed. Cir. 2012) (“claim splitting is forbidden by the principles of res judicata.”); *Sharp Kabushiki Kaisha v. Thinksharp, Inc.*, 448 F.3d 1368, 1370 (Fed. Cir. 2006) (for claim preclusion to apply, “the second claim must be based on the same transactional facts as the first and should have been litigated in the prior case.”).

The concept of a “claim”, for purposes of determining what constitutes the same transactional facts, is explained in § 24 of the *Restatement (Second) of Judgments* as follows:

(1) When a valid and final judgment rendered in an action extinguishes the plaintiff’s claim pursuant to the rules of merger or bar, the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.

(2) What factual grouping constitutes a “transaction”, and what grouping constitutes a “series”, are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties’ expectations or business understanding or usage.

(Emphasis added).

“Claim preclusion, where found, operates to bar subsequent assertion of the same transactional facts in the form of a different cause of action or theory of relief. Generally, this principle rests on the assumption that all forms of relief could have been requested in the first action.” *Young Eng’rs, Inc.* at 1314 (Fed. Cir. 1983).

B. Application of Law to Facts

1. The first element of claim preclusion is met because the named parties in this Cancellation proceeding are the identical parties named in Prior Action.

As to the first element of claim preclusion, the parties to this proceeding and the parties in the Prior Action are exactly the same. This Cancellation proceeding is between David S.

Beasley and William H. Howard DBA The Ebonys; the Prior Action was also between David S. Beasley and William H. Howard DBA The Ebonys. See Exhibit B; *Jet, Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 1363 (Fed. Cir. 2000) (when the parties to both claims are identical, the first element has been met).

2. The second element of claim preclusion is met because the Cancellation Petition and the Prior Action are based on the same set of transactional facts.

As to the second element of claim preclusion, the Cancellation Petition is based on the same transactional facts as the Prior Action. In determining whether the same set of transactional facts are present, the Federal Circuit considers whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage. *Phillips/May Corp. v. U.S.*, 524 F.3d 1264, 1271 (Fed. Cir. 2008). A review of Petitioner's submissions in the Prior Action (Exhibits B, C, D and E) makes obvious that the claims here arise from the same transactional facts as the Prior Action.

The facts alleged by Petitioner in its Cancellation Petition and in the Prior Action are related in time, space, origin, motivation and they form a convenient trial unit. In fact, the alleged facts are *identical*. In his Amended Petition in the Prior Action, Petitioner alleged and provided evidence of the following: (1) that Petitioner formed The Ebonys (with submitted evidence that he was using "THE EBONYs" long before Registrant); (2) that THE EBONYs was in use by Petitioner at least as early as 1971; (3) that Registrant does not have a right to use THE EBONYs (by virtue of the fact that he was not an original band member); (4) that Petitioner obtained a New Jersey trademark registration for THE EBONYs (and by virtue of that also had senior rights to the trademark over Registrant); (5) that Petitioner continues to use THE

EBONYS for entertainment services, including live performances; (6) that Petitioner never gave Registrant a right to use THE EBONYS; and (7) that Petitioner continues to use THE EBONYS.

In addition, at the beginning of his Amended Petition (in the Prior Action), Petitioner alleged that Registrant committed fraud in procuring the trademark because Registrant knowingly made false, material representations of fact in connection with the trademark application. See Exhibit B.

Though presented in a more traditional format and with a bit more detail, the instant Cancellation Petition raises nothing new that was not already alleged in the Prior Action, and certainly nothing new that arises out of *different* transaction facts. Paragraph 1 of the Cancellation Petition was covered in Paragraphs 2 and 7 of the Amended Petition in the Prior Action; Paragraph 3 of the Cancellation Petition is a statement of law, not an allegation of fact – it is based on the same “transactional facts” already alleged in the Prior Action; Paragraph 4 of the Cancellation Petition was covered in Paragraphs 2 and 7 of the Amended Petition in the Prior Action; Paragraph 5 of the Cancellation Petition raises no facts that are not part of the “transactional facts” already alleged in the Prior Action; Paragraph 6 of the Cancellation Petition was covered in Paragraphs 2, 3, 4, 5 and 7 of the Amended Petition in the Prior Action; Paragraph 7 of the Cancellation Petition was covered in Paragraph 5 of the Amended Petition in the Prior Action; Paragraphs 8 and 9 of the Cancellation Petition raise no facts that are not part of the “transactional facts” already alleged in the Prior Action.

Paragraphs 10 through 18 of the Cancellation Petition are all statements made in support of Petitioner’s “fraud” cause of action. This cause of action, however, was already alleged and litigated in the Prior Action. Specifically, the Amended Petition in the Prior Action stated as grounds for cancellation the following: “Fraud in procuring a trademark registration occurs when an applicant knowingly makes false, material representations of fact in connection with the

trademark application.” See Exhibit B. The allegations made in the Cancellation Petition are certainly more specific – but they form the same fraud claim already alleged and litigated in the Prior Action. (The Board dealt with almost the same situation in *Orouba Agrifoods Processing Company v. United Food Import* (Cancellation No. 92050739), where it granted defendant’s Motion for Summary Judgment based on claim preclusion).

In sum, the Prior Action alleged that Registrant committed fraud, that Petitioner is the sole rightful owner of the trademark, and that Registrant does not have rights to the trademark. These are the same allegations that are being made in the instant proceeding, and the facts that form the basis for the instant Cancellation Proceeding arise from the same “transactional facts” alleged (and covered in the evidence provided) in the Prior Action. Moreover, we are dealing here with the *identical* trademark registration, the *identical* services, and the *identical* parties.

3. The third element of claim preclusion is met because a final judgment was rendered in the Prior Action against Petitioner.

Registrant obtained a final judgment against Petitioner in the Prior Action. Res judicata does *not* require a final judgment on every claim subsequently made. Rather, there must have been “a” final judgment in the previous proceeding. The previous judgment will then preclude ALL claims that *could have been raised, even if they were not*, in the prior action See *Perma Ceram Enters. Inc. v. Preco Indus. Ltd.*, 23 U.S.P.Q.2d 1134, 1138 (TTAB 1992); *Young Engineers, Inc. v. U.S. International Trade Commission*, 721 F.2d 1305, 1314 (Fed. Cir. 1983) (“issue preclusion operates only as to issues actually litigated, whereas claim preclusion may operate between the parties simply by virtue of the final judgment”); *Pactiv Corp. v. Dow Chem. Co.*, 78 USPQ2d 1939, 1941; *Urock Network, LLC v. Sulpasso*, 115 USPQ2d 1409, 1412 (TTAB 2015) (claim preclusion extends to relitigation of “claims that were raised *or could have been raised* in an earlier action” (quoting *Allen v. McCurry*, 449 US 90, 94 (1980) (emphasis added)));

Bacardi & Co. Ltd. v. Ron Castillo, S.A., 178 USPQ 242, 244 (TTAB 1973); see also *Vitaline Corp. v. General Mills Inc.*, 891 F.2d 273, 13 USPQ2d 1172, 1173-74 (Fed. Cir. 1989). see also *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 77 n.1 (1984) (“Claim preclusion refers to the effect of a judgment in foreclosing litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit.”); *Aspex Eyewear Inc. v. Marchon Eyewear Inc.*, 101 USPQ2d 2015, 2020 (Fed. Cir. 2012) (“claim splitting is forbidden by the principles of res judicata.”); *Sharp Kabushiki Kaisha v. Thinksharp, Inc.*, 448 F.3d 1368, 1370 (Fed. Cir. 2006) (for claim preclusion to apply, “the second claim must be based on the same transactional facts as the first and should have been litigated in the prior case.”).

V. CANCELLATION PETITION IS BARRED BY ISSUE PRECLUSION

A. Collateral Estoppel – Relevant Law

An additional and independent basis to dismiss Petitioner’s Cancellation Petition is issue preclusion (*at least* with respect to the fraud claim). Even where claim preclusion does not apply (here it does), “the particular facts of certain cases may allow for the use of issue preclusion to bar relitigation” *Jet, Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 1365 (Fed. Cir. 2000); see also *Stephen Slesinger, Inc. v. Disney Enters., Inc.*, 2011 WL 2489755, at * 3-7 (TTAB June 8, 2011) (precluding relitigation of issues determined in Civil Action that were raised again during cancellation proceeding). The underlying rationale of issue preclusion is that “a party who has litigated an issue and lost should be bound by that decision and cannot demand that the issue be decided again.” *Slesinger, Inc.*, 2011 WL 2489755 at *4.

The doctrine of issue preclusion, which serves to bar the revisiting of issues that have been already fully litigated, has four elements: “(1) identity of the issues in a prior proceeding; (2) the issues were actually litigated; (3) the determination of the issues was necessary to the

resulting judgment; and (4) the party defending against preclusion had a full and fair opportunity to litigate the issues.” *Jet, Inc.*, 223 F.3d. at 1366.

B. Collateral Estoppel – Application to Facts

1. The first element of issue preclusion is met because at least some of the issues in the Prior Action and this Cancellation proceeding are the same.

As to the first element of issue preclusion, the issues of fraud and ownership of the trademark are the same issues that were litigated in the Prior Action. Thus, the same issues are present in this Cancellation proceeding as were present in the Prior Action.

2. The second element of issue preclusion is met, at least with respect to the fraud issue, because the issues were fully litigated in the Prior Action.

As to the second element of issue preclusion, the specific issues Petitioner raises in its Cancellation Petition were fully litigated in the Prior Action. *At the very least*, the fraud issue was fully litigated in the Prior Action.

3. The third element of issue preclusion is met because the issues decided in the Prior Action were necessary to the judgment there.

As to the third element of issue preclusion, the issues decided in the Prior Action were necessary to the judgment there. For the court to dismiss Petitioner’s Amended Petition, it was necessary for the Board to determine that Petitioner did not present sufficient evidence to satisfy the elements of the claim(s). At the very least, this element is satisfied with respect to the fraud claim.

4. The fourth element of issue preclusion is met because Petitioner had a full and fair opportunity to litigate the issues in the Prior Action.

As to the fourth and last element of issue preclusion, Petitioner had a full and fair opportunity to litigate the exact same issues that it raises in its Cancellation Petition. In light of

the foregoing, Petitioner should be collaterally estopped from relitigating the same issues during this Cancellation proceeding.

VI. CONCLUSION

For the foregoing reasons, Petitioner's Cancellation Petition should be dismissed on the grounds of claim and issue preclusion. The exact same claims and issues asserted in the Cancellation Petition were raised, fully litigated and adjudged on the merits against Petitioner in Cancellation Proceeding No. 92057071. Even if the Board finds that issue preclusion does not apply to all of the *issues*, Registrant respectfully submits that claim preclusion will apply to all of the claims made in this Cancellation Proceeding because all of the claims in this proceeding were alleged in the Prior Action, and all of the claims made in this proceeding arise from the "transactional facts" raised in the Prior Action.

Dated this 7th Day of August, 2017.



Moshe D. Lapin
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Motion for Summary Judgment has been served on Petitioner by emailing said copy on August 7, 2017 to the following email address(es):

uccupk@aol.com, jeffrey@jacobsonfirm.com

A handwritten signature in blue ink, reading "Moshe D. Lapin". The signature is written in a cursive style with a horizontal line underneath.

Moshe D. Lapin
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that the foregoing Motion for Summary Judgment is being submitted electronically through the Trademark Trial and Appeal Board's ESTTA System on this 7th day of August, 2017.



Moshe D. Lapin
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Baltimore, MD 21202

EXHIBIT A

December 9, 2014 TTAB DECISION

David S. Beasley v. William H. Howard d/b/a The Ebonys

Cancellation No. 92057071

This Opinion is Not a
Precedent Of The TTAB

Mailed: December 9, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board
—

David S. Beasley

v.

William H. Howard d/b/a The Ebonys
—

Cancellation No. 92057071
—

David S. Beasley, *pro se*.

William H. Howard, d/b/a The Ebonys, *pro se*.
—

Before Zervas, Ritchie and Adlin, Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

This is a cancellation proceeding in which Mr. David S. Beasley (Petitioner) seeks to cancel Registration No. 4170469, owned by Mr. William H. Howard, d/b/a The Ebonys (Respondent), for The Ebonys,¹ in standard character format, on the Principal Register, for “entertainment services in the nature of live performances by singing vocalists; entertainment in the

¹ Registered on the Principal Register on July 10, 2012, alleging dates of first use on April 17, 1998, and first use in commerce in 2003.

Cancellation No. 92057071

nature of vocal musical group; live performances by a musical group,” in International Class 41.

The sole pleaded ground for cancellation is fraud.² Specifically, Petitioner alleges that he is an original member of the group The Ebonys, which “continu[es] to receive quarterly royalty statements.” (petition at para. 1, 2). He further alleges that Respondent is not an “original member” and did not perform “any original live recordings.” *Id.*, at para 3. Petitioner alleges that he “continues to manage goods and services involving the name “The Ebonys” and that he “never relinquished in writing or verbally his rights of [sic] the ‘The Ebonys’ name to registrant, any other individual and/or group to provide profit to themselves for services or goods.” *Id.* at paras. 5, 6. Finally, petitioner alleges that he “continues with on-going projects as an original member/owner of “The Ebonys.” *Id.*, at para. 7.

Respondent filed an answer denying the salient allegations of the petition and setting forth some purported “affirmative defenses,” including that “Petitioner failed to disclose that The Ebonys was resurrected with new members in 1997 and the Registrant and the Petitioner were members of that resurrected group.” (Answer, affirm. def, 4.c.).

² With his initial petition to cancel, Petitioner checked off several grounds for cancellation on the ESTTA cover sheet but did not include a petition elucidating the grounds. In his amended petition, filed July 8, 2013, the sole ground stated was fraud. Since no other grounds were pursued nor pleaded with particularity, we consider any such grounds to have been waived. Furthermore, based on the lack of proper briefing and evidence, we do not find that any other claims were tried by implied consent.

Cancellation No. 92057071

Petitioner filed a paper during his briefing period through ESTTA, the Board's electronic filing system, titled "Amended Petition to Cancel." The ESTTA cover sheet identified the paper filed as "Brief on the Merits for Plaintiff." Petitioner's paper was not accompanied by a motion for leave to amend. Because Petitioner filed the paper during its briefing period and because the ESTTA cover sheet identified the filing as a "Brief," we treat the filing as Petitioner's brief.

The Record

Pursuant to Trademark Rule 2.122(b); 37 C.F.R. § 2.122(b), the record in this case includes the pleadings and the file of the involved registration. The parties both made submissions during their trial periods,³ and Petitioner during his rebuttal period. These consist of the following:

During Petitioner's Trial Period:

1. A state service mark registration issued by the State of New Jersey for The Ebonys, listing Petitioner as owner, with the filing date listed as March 7, 2003;
2. Management contract between Petitioner and Lynn Gross, d/b/a Octagon Development Group, dated November 14, 2004;

³ Petitioner submitted his Initial Disclosures, and Respondent submitted his Pretrial Disclosures, which need not be filed. However, since they were submitted during the respective trial periods, we construe them as notices of reliance. We note also that Petitioner attached several items to his petition and his amended petition. However, unless otherwise properly introduced into the record during trial, exhibits to pleadings are not evidence for that party, with one exception not applicable here. *See* Trademark Rule 2.122(c); 37 C.F.R. § 2.122(c)

Cancellation No. 92057071

3. Management contract between Petitioner, as “Owner of The Ebonys,” and Forrest Finney and Michael Mackintosh, dated October 1, 2007;
4. A letter from Jeff Gandel of Royalty Recovery to Clarence Vaughan, dated September 14, 2010;
5. A letter to Royalty Recovery, Inc., from Petitioner and others, dated September 14, 2010;
6. A letter from Philadelphia Records, dated August 19, 2013;
7. A Royalty Statement for the period ending June 30, 2013, for “The Ebonys” c/o David Beasley, from Philadelphia International Records; and
8. A flyer advertising a concert by Ebony’s Revue; printed from <http://mail.aol.com> on October 5, 2013.

During Respondent’s Trial Period:

1. A copy of Respondent’s involved registration and information from the underlying application file;
2. A copy of an article from *The Philadelphia Inquirer*, undated;
3. A copy of an article from *The Times*, dated April 17, 1998;
4. An autographed photograph of The Ebonys;
5. A copy of a ticket printed from *Ticketmaster.com* for The Ebonys, dated October 10, 2000;
6. A flyer advertising The Ebonys performing on December 31, 2003;
7. A flyer advertising Ebony’s [undated];

Cancellation No. 92057071

8. A printout advertising “The Big Show” DVD featuring The Ebonys; printed from oldies.com, undated;
9. A ticket and flyer advertising The Ebonys, featuring William “SMOKE” Howard at The Firehouse Café, September 10, 2011;
10. A flyer advertising The Ebonys dated October 27, 2012;
11. A flyer advertising The Ebonys, dated September 14, 2013; and
12. A copy of an article from *What’s Inside*; Spring/Summer 2012, Vol. 1, Issue 9.

During Petitioner’s Rebuttal Period:

1. Letter from Kenneth Gamble of Philadelphia International Records to Petitioner, dated May 12, 2014; and
2. Letter from Philadelphia International Records dated March 3, 2014, and attached W-9, signed by Petitioner.

Much of this material submitted by both parties is not suitable for the notice of reliance procedure. *See* Rule 2.122(e); 37 C.F.R. § 2.122(e) (permitting notice of reliance on official records, or printed publications “available to the general public in libraries or of general circulation”); and *Safer Inc. v. OMS Investments Inc.*, 94 USPQ2d 1031, 1039 (TTAB 2010) (permitting notice of reliance on Internet printouts that identify the date of publication or date accessed as well as the website address). We note, however, that neither party objected to the other’s submissions, and their consideration does not affect the outcome of our decision. Accordingly, we

Cancellation No. 92057071

may include them in our analysis. *See Morgan Creek Productions Inc. v. Foria Int'l Inc.*, 91 USPQ2d 1134, 1136 (TTAB 2009) (although materials were not properly made of record, parties treated them as such, and thus Board deemed the parties to have stipulated the materials into the record); *Alfacell Corp. v. Anticancer Inc.*, 71 USPQ2d 1301 (TTAB 2004) (evidence not properly made of record deemed stipulated into the record because it was treated as such by the parties).

Standing

To establish standing, a petitioner must establish a “personal interest in the outcome of the proceeding” as well as “a reasonable basis for belief of damage.” *See Books on Tape Inc. v. The Booktape Corp.*, 836 F.2d 519, 5 USPQ2d 1301, 1302 (Fed. Cir. 1987) (petitioner, as a competitor of respondent, “clearly has an interest in the outcome beyond that of the public in general and has standing”). “A belief in likely damage can be shown by establishing a direct commercial interest.” *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000).

We must assess whether a plaintiff is a mere intermeddler or has real interest in the case. *See Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999); *Lipton Indus. Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). Under this liberal standard, Petitioner has shown that he has a reasonable belief of damage and a real interest in this proceeding, because Respondent admits that Petitioner was a member of The

Cancellation No. 92057071

Ebonys, and the record includes Petitioner's New Jersey service mark registration. Therefore Petitioner is not a mere intermeddler, and he has established his standing. *Id.*; 15 U.S.C. § 1064.

Fraud

The only ground alleged in the amended petition for cancellation is fraud. Petitioner alleges that the group The Ebonys was formed in 1969 and consisted of several vocalists, which included Petitioner, but did not include Respondent. (petition at para. 1). The amended petition further alleges that The Ebonys was signed to a record deal and "continu[es] to receive quarterly royalty payments." *Id.* at para. 2; and that Respondent "was not and is not an original member or performed on any original live recordings of The Ebonys singing/performing group." *Id.*, at para. 3. The amended petition further alleges that Petitioner registered The Ebonys with the State of New Jersey in 1997. *Id.*, at 4.

The Court in *In re Bose Corp.*, 476 F.3d 1331, 91 USPQ2d 1938, 1939 (Fed. Cir. 2009), set out the relevant standard for proving fraud:

"Fraud in procuring a trademark registration or renewal occurs when an applicant knowingly makes false, material representations of fact in connection with his application." *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 48 [1 USPQ2d 1483] (Fed. Cir. 1986). A party seeking cancellation of a trademark registration for fraudulent procurement bears a heavy burden of proof. *W.D. Byron & Sons, Inc. v. Stein Bros. Mfg. Co.*, 377 F.2d 1001, 1004 [153 USPQ 749] (CCPA 1967). Indeed, "the very nature of the charge of fraud requires that it be proven 'to the hilt' with clear and convincing

Cancellation No. 92057071

evidence. There is no room for speculation, inference or surmise and, obviously, any doubt must be resolved against the charging party.” *Smith Int’l, Inc. v. Olin Corp.*, 209 USPQ 1033, 1044 (TTAB 1981).

Petitioner has failed to submit evidence showing that Respondent made a false, material representation of fact in connection with his trademark application, and that he did so with the intent to deceive the Trademark Office. The claim thus fails.

Decision: The petition to cancel is dismissed.

EXHIBIT B

Cancellation No. 92057071

Amended Petition For Cancellation filed by David S. Beasley

Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>ESTTA Tracking number: **ESTTA547176**Filing date: **07/08/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057071
Party	Plaintiff David S. Beasley
Correspondence Address	DAVID S BEASLEY 1801 LAUREL ROAD, UNIT 612 LINDENWOLD, NJ 08021 UNITED STATES dbea856005@aol.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Mr. David S. Beasley
Filer's e-mail	dbea856005@aol.com
Signature	/David S Beasley/
Date	07/08/2013
Attachments	petition for cancellation-final.pdf(514364 bytes) Ebony Document 1.pdf(1545326 bytes) Ebony Document 2.pdf(2330300 bytes) CERTIFICATE OF SERVICE.pdf(95841 bytes)

“IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD,”

In the Matter of trademark Registration No. 4,170,469

For the Mark: The Ebonys

Petitioner

David S. Beasley
1801 Laurel Road Unit 612
Lindenwold, NJ 08021

v.

Registrant

William H. Howard dba The Ebonys
104 S. Glenwood Avenue
Aldan, PA 19018-4016

Cancellation No. 92057071

AMENDED PETITION TO CANCEL A TRADEMARK REGISTRATION.

David Beasley the petitioner believes that he will be damaged by the above-identified registration, and hereby petitions to cancel the same.

The Grounds for Cancellation are as follows:

Fraud

- *Fraud in procuring a trademark registration occurs when an applicant knowingly makes false, material representations of fact in connection with the trademark application.*

1. The Ebonys were formed in 1969 by David Beasley/petitioner and consist of three vocalists including himself; James Tuten (deceased) Clarence Vaughn and Jennifer Holmes.
2. The Ebonys were officially signed with Assorted Music Records dba Philadelphia International Records in January 1971 and continue to receive quarterly royalty statements.
3. Registrant was not and is not an original member or performed on any original live recordings of The Ebonys singing/performing group.
4. David Beasley/petitioner registered “The Ebonys” with the State of New Jersey as Class 041 in 1997.

5. David Beasley/petitioner continues to manage goods and services involving the name “The Ebonys”. David Beasley/petitioner manages entertainment services in the nature of live performances by vocalist; entertainment in the nature of vocal music groups; and live performances by musical groups.

6. David Beasley/petitioner never relinquished in writing or verbally his rights of the “The Ebonys” name to registrant, any other individual and/or group to provide profit to themselves for services or goods.

7. David Beasley/petitioner continues with on-going projects as an original member/owner of the “The Ebonys”.

By: David S. Beasley
Petitioner

Date: July 8, 2013

2

June 7, 1996

Artist Right Enforcement Crop
250 W. 57th Street
Suite 520
New York, New York

Mr. Chuck Rubin,

I am a member of the former singing group The Ebonys. Attached is a copy of my contract that was signed in January 1971. I have been referred to you by Bernie Wilson (The BlueNotes), to address the issue of royalties.

Attached find a list of songs that were released but not apart of the album, along with songs that were on the album.

I have been intouch with Clarence Vaughn & Jennifer Holmes Rossi in reference to contacting you (members). They are interested in hearing from you. If I can be of further assistance, please contact me.

Thank you in advance for your time. Looking forward to hearing from you in the near future.

David Beasley

attachments

ALBUM TITLE: THE EBONYS

SIDE I

HOOK UP AND GET DOWN
IT'S FOREVER
LIFE IN THE CONTRY
SEXY WAYS

SIDE II

I'M SO GLAD I'M ME
I'LL TRY
NATION TIME
I BELIEVE
YOU'RE THE REASON WHY

45 RELEASES

2 WRONGS DON'T MAKE A RIGHT
DETERMINATION
SORRY WE COULDN'T MAKE IT
CHRISTMAS JUST AIN'T CHRISTMAS (Without the One you Love)

Compact Disc has been released in the States, also Japan - 1995
See attached

Platinum Classic Recording has a Groove Me album with Ebony Recording on it.

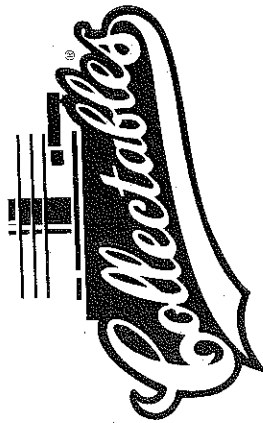
Ebony Members

Mr. Clarence Vaughn
728 Bentley Road
Lindenwold, NJ 08021
609-783-7135

Mrs. Jennifer Holmes Rossi
3753 King Avenue
Pennsauken, NJ 08105
609-663-8419

Mr. David Beasley
612 Timber Creek Condos
Lindenwold, NJ 08021
609-784-3037

Mr. James Tooten (deceased 1995)



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COL-5659
Sony # A-26383

TheEbony's

S F S

Featuring
You're The Reason Why
It's Forever
I Believe
Plus Much More

Collectables

GOLDEN PHILLY CLASSICS

THE EBONYS - Golden Classics: Collectables 5659

The Ebonys have the distinction of scoring the first hit on Philadelphia International Records. The Camden, New Jersey, quartet was formed in the late '60s in their hometown, just across the Delaware River from Philadelphia. Initially restricted to playing local clubs, they got their big break when Leon Huff heard them perform.

Huff and his partner, Kenny Gamble, had already produced hits for artists like The Intruders and Jerry Butler. They had even tried to start a couple of their own labels, but were discouraged by the lack of promotion, especially after a bitter experience with Chess Records, which had handled their Neptune label.

Despite their problems with bigger companies, Gamble and Huff were still convinced their unique blend of funky rhythm and blues with sophisticated, highly orchestrated musical backgrounds could find a large audience. They finally signed with one of the biggest labels in the world, cutting a deal with Columbia Records in 1971 to distribute and market their Philadelphia International label.

The first few P.I. singles didn't set the charts on fire. But they did a lot better with Philadelphia International 3503. "You're The Reason Why" was written by Gamble and Huff and arranged by the accomplished Thom Bell. The dramatic ballad was a perfect vehicle for The Ebonys. It featured the haunting voice of Jennifer Holmes at the beginning of the song before she gave way to the rest of the group and their tormented emotionalism. Holmes, along with David Beasley, James Tuten and Clarence Vaughn, saw their powerful debut soar into the Billboard rhythm and blues Top 10 in the early summer of 1971. It also just missed the pop Top 50.

Gamble and Huff continued to work with their newest hitmakers, but subsequent singles didn't fare as well as their debut. The strong "Determination" (P.I. 3510) made it into the R&B Top 50 in late 1971. They did better with "It's Forever" (P.I. 3529), a classic soul ballad written by Leon Huff, that went to No. 14 on the R&B chart in the spring of 1973.

The group scored one more Philadelphia International hit. "Life In The Country" (P.I. 3548) went to No. 69 on the R&B charts in the fall of '74. Their one Philadelphia International album - "The Ebonys" - is the source for much of the material on this collection of their best work.

After leaving the Gamble-Huff operation, The Ebonys did score one more minor hit. They went to No. 83 in the fall of 1976 with "Making Love Ain't No Fun (Without The One You Love)" on Buddah 537.

After the hits slowed down The Ebonys drifted apart. But Jennifer Holmes did have another run of success as a member of the Philly-based quartet Creme D'Cocoa, which scored four hits in the late '70s for the Venture label. Their biggest success was "Doin' The Dog" (Venture 112), which went to No. 30 on the Billboard R&B chart.

While The Ebonys will always have the distinction of being the first hit act on Philadelphia International, it's clear from the material on this album that their success was no fluke. Jennifer Holmes and her three partners were fine singers and they did a very good job with the songs Gamble and Huff gave them. This is a tribute to the unique talent of both the singers and their producers.

--MARK MARYMONT

Billboard chart numbers courtesy of Joel Whitburn's Record Research.



1973

THE EBONYS



DAVID BEASLEY

CLARENCE
VANDERWIL

WILLIAM
TUTEN

JENNIFER
HOMES
ROZZI

THE EBONYS



Kayden Productions, Inc.
13 W. PARK AVENUE
MERCANTVILLE, N. J. 08859





**NEW JERSEY DEPARTMENT OF STATE
DIVISION OF COMMERCIAL RECORDING
ORIGINAL APPLICATION TO REGISTER
A TRADE OR SERVICE MARK**

This form may be used by applicants seeking to register a State trade or service mark pursuant to NJSA 36. Applicants are responsible for strict adherence to all requirements set forth in State law. (PLEASE REFER TO INSTRUCTIONS ON REVERSE SIDE)

1. Mark Type: (check one) Trade Mark XXXX Service Mark
2. Name and Description of Mark: (list the term that constitutes the mark or, in the case of a design mark, provide a brief description of its appearance)

THE EBONY'S

3. Description Of The Goods Or Services Involved:

ENTERTAINMENT/SINGING

4. Classification Number(s): (Minimum of one)

5. Applicant Information:

- a. Name: DAVID S. BEASLEY
- b. Business Address: 612 TIMBERCREEK CONDOS
LINDENWOLD, NJ 08021
- c. Applicant is: (check one) xx An Individual Corporation Partnership Other Business Entity
- d. If applicant is a corporation, partnership or other business entity, list the home state:
N/A
- e. If applicant is a partnership, list the names of all general partners:
N/A

6. Assignee Information: (if applicable, provide assignee name/address)

- a. Name: N/A
- b. Address:

7. Dates: Date First Used in New Jersey (must be entered) 1969 Date First Used Elsewhere: 1969

8. Signature(s) and Statement of Ownership: (verification required)

The applicant attests that he or she is the owner of the mark, and that the mark is in use in this State, and that, to his or her knowledge, no other person has registered the mark, either with the US Patent and Trade Mark office or with the Secretary of State, or has the right to use the mark or a mark in such near resemblance as to be likely, when used in connection with the goods or services of such other person, to cause confusion, to to cause mistake, or to deceive.

David Beasley
(Signature of Applicant, or a Member of the Firm,
or an Officer of the Corporation or Business Applying)

5/16/97
(Date)

(Assignee, if Applicable)

(Date)

Subscribed and sworn to before me, Rose D. Giuffre, a Notary Public,
this 16th day of May A.D. 1997.

Rose D. Giuffre
(Notary Public)

"ROSE D. GIUFFRE
Notary Public of New Jersey
My Commission Expires 11/28/98"

Note: Attach to this application: 1) a drawing of the mark; and 2) three (3) specimens showing the mark as actually used.

3b.
I, THE TREASURER THE STATE OF NEW JERSEY, DO HEREBY
CERTIFY THAT

DAVID S. BEASLEY
612 TIMBER CREEK CONDOS
LINDENWOLD NJ 08021

DID ON THE 7TH DAY OF MARCH A.D. 2003 FILE IN THIS
DEPARTMENT

SERVICE MARK
MARK REG NUM : 21286

THE EBONYS
ENTERTAINMENT/SINGING GROUP

CLASSIFICATION GROUP : SERVICES
CLASS : 041 EDUCATION AND ENTERTAINMENT

RENEWAL DATE: 03/19/2013
EXPIRATION DATE: 03/07/2018
DATE OF FIRST USE IN NEW JERSEY: 01/01/1969
DATE IN USE ELSEWHERE: 01/01/1969

AS BY THE STATUTES OF THIS STATE REQUIRED.



IN TESTIMONY WHEREOF, I HAVE
HEREUNTO SET MY HAND AND AFFIXED
MY OFFICIAL SEAL AT TRENTON, THIS
19TH DAY OF MARCH
A.D. 2013 .

Andrew P Sidamon-Eristoff
State Treasurer

Certificate Number: 127767183

Verify this certificate online at

http://www1.state.nj.us/TYTR_StandingCert/JSP/Verify_Cert.jsp

(4)



**Philadelphia
International
Records**

May 20, 2010

The Ebonys
c/o David Beasley
1801 Laurel Road
Lindenwold, NJ 08021

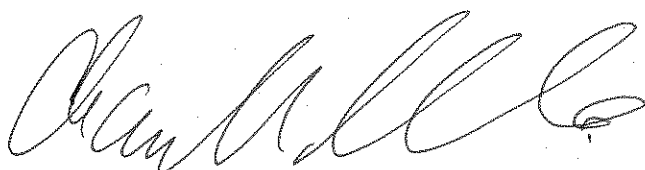
Re: Royalty Statement for PE 12/31/09

Mr. Beasley,

Enclosed please find the most current Ebonys Royalty Statement for *Period Ending December 31, 2009* for The Ebonys. Thank you for providing us the necessary contact information needed for future Ebonys royalty statements. Pursuant to our email and phone correspondence, it is our understanding that you are an official and legal representative of the group and are authorized to receive information on the group's behalf.

For any further questions, please give us a call at (215) 985-0900.

Sincerely,



Charles B. Gamble
Executive Vice President
Philadelphia International Records

Cc: Royalty Administration

ASSORTED MUSIC, INC.

250 South Broad Street

Philadelphia, Pennsylvania 19102

January 1, 1971

Messrs. David Beasley, Clarence
E. Vaughn, James Tuten and
Miss Jennifer Holmes
p/k/a "Ebonys"
c/o Gerald Wilson
403 Parry Road
Cinnaminson, New Jersey

Dear Sirs and Miss Holmes:

The following, when signed by you and us, will constitute the agreement between you and us, pursuant to which you will perform exclusively for us as a recording artist, upon the terms and conditions herein set forth:

1. This agreement shall commence as of the date January 1, 1971, and shall continue in force for a term which shall consist of an initial period of one (1) year from such date, and the additional period or periods, if any, by which such term may be extended through our exercise of one or more of the options granted to us herein.

2. During the term of this agreement, you will render your services at recording sessions at studios selected by us, at times and places to be designated by us, for the purpose of making phonograph records. The musical compositions to be recorded shall be designated by us, and each master recording made hereunder shall be subject to our approval as satisfactory for the manufacture and sale of records. During the initial period of the term hereof, you will perform for the recording of satisfactory master recordings which shall consist of a minimum of four (4) 45 r.p.m. sides, or their equivalent, and we will record your performances. Additional master recordings shall be performed by you and recorded by us at our election.

-2-

3. During the term of this agreement you will not perform for the purpose of making phonograph records or master recordings for any person other than us, and during a period of five (5) years after the expiration of the term of this agreement, for any reason whatsoever, you will not perform any musical composition which shall have been recorded hereunder for any person other than us for the purpose of making phonograph records or master recordings. It is agreed between you and us that your services to be rendered hereunder are of a special, unique, unusual, extraordinary and intellectual character, involving skill of the highest order, which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated by damages in an action at law, and that your breach of any of the provisions contained in this agreement shall cause us irreparable damage and injury. You hereby expressly agree that we will be entitled to injunctive relief and other equitable relief to prevent or cure any breach or threatened breach of this agreement by you.

4. All master recordings recorded hereunder and all matrices and phonograph records manufactured therefrom, together with the performances embodied thereon, shall be entirely our property, free from any claims whatsoever by you or any person deriving any rights or interests from you. Without limiting the generality of the foregoing, we and/or our subsidiaries, affiliates and licensees shall have the unlimited right, from time to time, to manufacture by any method now or hereafter known phonograph records and other reproductions on any mediums or devices now or hereafter known, of the master recordings made hereunder, and to sell, transfer or otherwise deal in the same throughout the world under any trademark, trade name and label, or to refrain from such manufacture, sale and dealing.

5. At our election, all compositions recorded pursuant to this or any other agreement between you and us which are written or composed by you or owned or controlled by you or any party which is allied or affiliated with you or in which you have a direct or indirect interest, shall be licensed to us at a royalty rate of 1-1/2 cents per 45 r.p.m. record side, or its equivalent, on the basis of Ninety (90%) Per Cent of net sales of records, except that (i) with respect to records sold

-3-

and/or distributed as "bonus" or "free" records through "Club Operation" (as defined in sub-paragraph 8 (b) of this agreement), the royalty rate shall be three-fourths (3/4ths) of the rate set forth above, payable on the basis of Ninety (90%) Per Cent of net sales of records; and (ii) no copyright royalties shall be payable with respect to records described in sub-paragraph 8 (f) hereof. Arranged versions of musical compositions in the public domain, when furnished by you or any party described above for recordings hereunder, shall be free of copyright royalties. Any assignment made of the ownership or copyright in any such composition or in any such arranged version of a musical composition in the public domain shall be made subject to the provisions hereof. In the event we are required to pay mechanical copyright royalties in excess of those provided in this Paragraph 5, we shall have the right to charge such excess against all royalties or other sums payable to you hereunder.

6. (a) For your services rendered hereunder, and for the rights granted herein to us, we will make a non-returnable payment to you, within fourteen (14) days after the services are rendered at each recording session, at the rate of union scale; and each such payment shall constitute an advance and shall be charged against your royalties under this and/or any other agreement between you and us, if and when earned. Without limiting the generality of the foregoing, included amount payments which shall hereunder constitute advances chargeable against royalties shall be all amounts which are paid by us pursuant to the requirements of any collective bargaining agreement between us and any union representing you for performances hereunder.

(b) We shall specify your accompaniment (instrumental and vocal), arrangements and copying and studio charges and/or rentals in respect of master recordings made hereunder, and we shall pay the costs of such accompaniment as well as the costs of such arrangements and copying and studio charges and/or rentals which are specifically undertaken in respect of such master recordings (such costs are hereinafter collectively referred to as "Accompaniment Costs"); and all such Accompaniment Costs so paid by us shall constitute advances and shall be charged against your royalties earned. Without limiting the generality of the foregoing, including among Accompaniment Costs,

which shall hereunder constitute advances chargeable against royalties, shall be all amounts which are paid by us pursuant to the requirements of any collective bargaining agreements between us and any union representing other persons who render services hereunder or in connection with any accompaniment (instrumental and vocal), arrangements and copying and studio charges and/or rentals for performances hereunder.

7. (a) We will pay you a basic royalty of (i) Six (6%) Per Cent of the applicable wholesale price (less all taxes) in respect of Ninety (90%) Per Cent of all phonograph records consisting entirely on both sides thereof a composition or compositions performed by you and recorded hereunder, manufactured and sold by us or by any subsidiary, affiliate or licensee to whom we have supplied a copy or duplicate of a master or a matrix of or embodying such composition or compositions; and (ii) one-half ($\frac{1}{2}$) of such percentage of the applicable wholesale price (less all taxes) in respect of Ninety (90%) Per Cent of all phonograph records consisting entirely of such composition or compositions on only one side thereof, so manufactured and sold. In computing the number of records manufactured and sold hereunder, we shall have the right to deduct returns and credits of any nature, including, without limitation, those on account of One Hundred (100%) Per Cent return privileges, defective merchandise, exchange privilege, promotional credits, error in billing, usable overstock and error in shipment.

(b) Royalties for records sold for distribution outside of the United States of America shall be computed in the national currency, at our election, of the country of manufacture, the country of sale of the United States of America, and as to sales made for distribution outside of the United States of America, shall be paid at the same rate of exchange as we are paid; provided, however, that royalties on records sold for distribution outside of the United States of America shall not be due and payable until payment therefor has been received by us in the United States of America, and provided further, that if we do not receive payment in United States dollars currently and elect to accept payment in a foreign currency, we may deposit to your account (and at your expense) in such currency in a depository selected by us, all payments so received as royalties applicable to this agreement, and shall notify you thereof promptly. Such deposit, as above stated, shall fulfill our obligation hereunder

as to record sales to which such royalty payments are applicable.

(c) With respect to any master recording embodying your performance hereunder, together with the performance of another artist or artists to whom we are obligated to pay royalties in respect of phonograph records embodying the joint performances contained on such master recording:

(i) the royalty rate to be used in determining the royalties payable to you in respect of such master recording shall be computed by multiplying the royalty rate otherwise applicable thereto by a fraction, the numerator of which shall be one and the denominator of which shall be the total number of royalty artists whose performances are embodied on such master recording; and

(ii) in determining the portion of the Accompaniment Costs applicable to such master recording which shall be charged against your royalties if and when earned, such portion shall be computed by multiplying the aggregate amount of such Accompaniment Costs by the same fraction used in determining the royalties payable to you in respect of such master recording.

(d) With respect to a side of a long-playing (33-1/3 r.p.m.) or extended-play microgroove record, which embodies on such side performances contained on another master recording(s) in addition to the performances contained on a master recording(s) recorded hereunder, the royalty payable to you in respect of such record side shall be computed by basing the rate provided in sub-paragraph 7(a) (ii) (or other applicable rate) upon that proportion of the applicable wholesale price (less all taxes) of such record that the number of 45 r.p.m. sides required to embody your performances recorded hereunder on such record side bears to the total number of 45 r.p.m. sides required to embody the total number of performances on such record side.

(e) With respect to all phonograph records sold hereunder, royalties on phonograph records included in albums, jackets, cartridges, cassettes, boxes or any other type of package or container (herein collectively referred to as "container(s)") shall be

based solely upon the applicable wholesale price of such phonograph records in containers less all taxes and also less a container charge not to exceed Ten (10%) Per Cent of the applicable price of disc phonograph records and Twenty-five (25%) Per Cent with respect to all other forms of records as defined in sub-paragraph (e) (i) or (e) (ii), as the case may be, of Paragraph 16 hereof.

8. Notwithstanding anything to the contrary contained in this or any other agreement between you and us, the following shall apply with respect to phonograph records manufactured pursuant to this or any other such agreement and sold and/or distributed in the manner set forth hereinbelow:

(a) In respect of phonograph records sold for distribution outside of the United States of America, the royalty rate payable to you therefor shall be equal to one-half ($\frac{1}{2}$) of the applicable royalty rate which would have been payable to you therefor if such records had been sold for distribution in the United States of America.

(b) In respect of phonograph records sold through any direct mail order operation or through any direct sales-to-consumer operation carried on by us, our subsidiaries, affiliates or licensees including, without limitation, any Record or Tape Club (herein collectively referred to as "Club Operation"), the royalty rate shall be one-half ($\frac{1}{2}$) of the otherwise applicable royalty rate. Notwithstanding the preceding sentence, if such phonograph records are sold through any such Club Operation at a price (excluding postage and handling charges) of One (\$1.00) Dollar or less, the royalty rate payable to you in respect of such phonograph records if they had been sold through such Club Operation at a price of more than One (\$1.00) Dollar and, notwithstanding anything to the contrary contained in this agreement, such royalty rate shall be computed on the basis of the actual sales price charged by such Club Operation for such phonograph records (excluding postage and handling charges). Notwithstanding anything contained in the foregoing two sentences or elsewhere in this agreement, no royalty shall be payable to you with respect to (i) phonograph records which are received

by members of any such Club Operation, either in an introductory offer in connection with such Club Operation or upon recommending that another join such Club Operation and/or as a result of the purchase of a required number of records, including, without limitation, records distributed as "bonus" and/or "free" records, or (ii) phonograph records for which such Club Operation is not paid.

(c) In respect of phonograph records sold to our clients for promotional, sales incentives or educational purposes or phonograph records sold to educational institutions or libraries, the royalty rate payable to you therefor shall be one-half (1/2) the royalty rate otherwise payable and shall be computed on the basis of the actual sales price therefor (less all taxes and container charges) to any of the foregoing.

(d) In respect of phonograph records sold in the form of pre-recorded tape, the royalty rate payable to you therefor shall be one-half (1/2) of the applicable royalty rate otherwise payable if such record(s) were sold in disc form.

(e) In respect of phonograph records sold on a "low-price" or "budget" label, the royalty rate shall be one-half (1/2) the applicable rate otherwise payable.

(f) No royalty shall be payable to you in respect of phonograph records sold as "cut-outs" after the listing of such records has been deleted from our catalog or in respect of phonograph records distributed as "free" or "no-charge" records or records sold and/or distributed to radio stations or for use on transportation facilities to promote or stimulate the sale of phonograph records embodying your performances.

9. In respect of the royalties provided for herein:

(a) We will compute royalties payable to you hereunder within sixty (60) days after June 30 and after December 31 of each year during which records made hereunder are sold for the preceding six (6)-month period, and will render accountings for and pay such royalties, less any unrecouped advances under this and/or any other agreement between you and us, within such sixty (60) days, except as provided in sub-paragraph 7(b) hereof, and except with respect to sales of records upon which royalties are payable to us by a distributor thereof. We shall be responsible for payment of your royalties on such sales only after receipt by us from such distributor of the royalties applicable to such sales.

-8-

(b) All royalty statements and all other accounts rendered by us to you hereunder shall be binding upon you and not subject to any objection by you for any reason whatsoever unless specific objection in writing, stating the basis thereof, is given to us within six (6) months from the date rendered. Notwithstanding anything to the contrary contained herein, we shall be under no obligation to account to you in respect of, and/or pay to you, sums of Fifty (\$50.00) Dollars or less, unless we receive a written demand from you for such an accounting and payment.

10. (a) We shall have the right to use and to allow others to use your name and likeness and biographical material concerning you for advertising and purposes of trade, and otherwise without restriction, in connection with the phonograph records made pursuant to this agreement and in advertisements for our company, its artists and products. We shall not use or authorize any direct endorsement by you of any record or performance without your prior written consent. During the term of this agreement, you shall not endorse or authorize your name or likeness to be used in connection with the advertising or sale of products in the same category as those which are currently manufactured and sold by or for us.

(b) Without limiting the provisions of sub-paragraph 10(a) hereof, you hereby grant to us, during the term of this agreement, the exclusive right, throughout the world, to authorize the use of your name and/or likeness and/or biographical material concerning you, whether alone or in conjunction with other elements, in connection with the sale, lease, license or other disposition (herein collectively referred to as "sale(s)") of merchandising rights and to enter into agreements covering such sales. It is expressly understood and agreed that any contract entered into by us for such a sale during the term of this agreement shall continue in full force and effect in accordance with the provisions thereof, but after the termination of the term of this agreement, we shall have no right to enter into a new contract to make any new sale authorizing the use of your name and/or likeness after the termination of the term of this agreement. For the rights granted by this sub-paragraph we will pay you, in United States dollars, Fifty (50%) Per Cent of the net monies earned and received by us in the United States of America from such sales of merchandising rights authorizing the use of your name and/or likeness and/or biographical material concerning you pursuant to this agreement.

-9-

(c) You warrant and represent that you own all rights in and to the name "Ebonys" (hereinafter referred to as the "Name"), and that you have the sole and exclusive right to use and to allow others to use the Name in connection with the manufacture, advertising and sale of phonograph records. You hereby grant to us, and further warrant and represent, that we shall have the right to use and to allow others to use the Name for advertising and purposes of trade and otherwise without restriction in connection with the phonograph records made pursuant to this agreement and in advertisements for our company, its artist and products and exclusively in connection with the merchandising rights to the same extent and on the same terms and conditions as set forth herein with respect to your names. It is understood and agreed that (i) during the term of this agreement you will not authorize or knowingly permit any performance by any person or persons who shall in any way be identified with the Name (or any name substantially similar thereto) for the purpose of making phonograph records for any person other than us, and (ii) during a period of five (5) years after the expiration of the term of this agreement, for any reason whatsoever, you will not authorize or knowingly permit the performance by any person or persons who shall in any way be identified with the Name (or any name substantially similar thereto) of any compositions recorded hereunder for any person other than us for the purpose of making phonograph records. It is further understood and agreed that you will not at any time manufacture, distribute or sell or authorize or knowingly permit the manufacture, distribution or sale by any person other than us of phonograph records embodying (i) the performances by any person or persons rendered during the term of this agreement, or (ii) the performance by any person or persons of a composition recorded hereunder rendered within five (5) years after the expiration of the term of this agreement, which phonograph records and/or performances shall in any way be identified with the Name or any name substantially similar thereto. You acknowledge that any use of the Name (or any name substantially similar thereto) contrary to the provisions hereof would cause us irreparable injury, and you agree to use your best efforts in assisting us to prevent any such use.

(d) In the event that during the term of this agreement any artist shall leave the group hereunder identified with the Name and/or shall cease to perform as a member of such group, you shall promptly give us notice in writing to such effect and in the event we shall deem it advisable, such leaving member shall be replaced by a new member who shall be mutually acceptable; and the

-10-

name of such new member shall thereafter be deemed substituted in this agreement in the place of such leaving member, and such new member, by performing hereunder, shall automatically be bound by all the terms and conditions of this agreement. Upon our request therefor, the remaining members of the group will duly cause any such new member to execute and deliver to us such document as we, in our judgment, may deem necessary or expedient to carry out or effectuate the purpose or intent of the foregoing sentence. Such leaving member shall thereafter be relieved from further performances hereunder with the group, but shall continue to be bound individually by the applicable provisions of this agreement including, without limitation, the provisions set forth in subparagraphs 10(e) and 3 hereof.

(e) You warrant and represent that, in the event any one or more of the artists shall so leave the group as provided in sub-paragraph 10(d) hereof, we shall have, and you and each of you does hereby grant to us, and irrevocable option on your individual and exclusive services for the purpose of making phonograph records. Such option, with respect to any such leaving member, may be exercised by us by giving such leaving member notice in writing within ninety (90) days after our receipt of the notice provided for in said sub-paragraph 10(d); and, in the event of our such exercise of option, such leaving member shall execute our then current standard form of term recording contract containing the following provisions:

(i) a term consisting of not less than the remaining balance of the term of this agreement as it may be extended by our exercise of the options granted to us herein;

(ii) a minimum of four (4) 45 r.p.m. record sides or their equivalent for which satisfactory master recordings will be performed and recorded during each year of such term, it being understood and agreed that if the remaining balance of the term of this agreement shall be less than six (6) months, then the minimum number of such 45 r.p.m. record sides for which master recordings will be performed and recorded during such remaining balance of the term shall be one-half ($\frac{1}{2}$) of the foregoing number;

(iii) a royalty in respect of phonograph records embodying performances recorded during such term at the rates set forth in Paragraphs 7 and 8 of this agreement; and

-11-

(iv) a payment for services rendered at each recording session at the rate of union scale, which payment shall constitute advances chargeable against such royalties.

In the event that during the term of this agreement the group shall completely disband, you shall promptly give us notice in writing to such effect, and, in such event, the provisions of this sub-paragraph 10(e) shall be applicable with respect to each member of the group.

(f) As to all matters contained in this agreement to be determined by mutual agreement between you and us, or as to which your approval or consent is required, you shall not unreasonably withhold such agreement, approval or consent. Your duties, liabilities, obligations, warranties, representations, authorizations and agreements contained in this agreement are joint and several and all references herein to "you" and "your" in connection therewith shall include all of you inclusively and each of you individually, unless otherwise specified.

11. You will not, at any time, manufacture, distribute or sell or authorize or knowingly permit the manufacture, distribution or sale by any person other than us of phonograph records embodying:

(a) any performance rendered by you during the term of this agreement; or

(b) any performance rendered by you within five (5) years after the expiration of the term of this agreement of a composition which shall have been recorded pursuant to this agreement.

You will not record or authorize or knowingly permit to be recorded for any purpose any such performances without in each case taking reasonable measures to prevent the manufacture, distribution and sale at any time by any person other than us of phonograph records embodying such performances. Specifically, without limiting the generality of the foregoing, you agree:

(a) if, during the term of this agreement you perform for the purpose of making transcriptions for radio or television or soundtracks for motion picture films; or

(b) if, within five (5) years after the expiration of the term of this agreement you perform for any such purpose any composition which shall have been recorded pursuant to this agree-

-12-

you will do so only pursuant to a written contract containing an express provision that neither such performance nor any recording thereof will be used, directly or indirectly, for the purpose of making phonograph records.

You will promptly furnish to us, at our Philadelphia office, a copy of the pertinent provisions of each such contract and will cooperate fully with us in any controversy which may arise or litigation which may be brought relating to our rights under this paragraph.

12. You warrant and represent that you are under no disability, restriction or prohibition in respect of (a) your right to execute this agreement and perform its terms and conditions, and more particularly, (b) your right to perform for the recording of any and all compositions hereunder, except to the extent, if any, set forth in Schedule I attached hereto and made a part hereof. You agree to and do hereby indemnify, save and hold us harmless from loss or damage (including reasonable attorneys fees) arising out of or connected with any claim by a third party which is inconsistent with any of the warranties or representations made by you in this agreement. You will reimburse us on demand for any payment made by us at any time after the date hereof in respect of any liability or claim to which the foregoing indemnity relates.

13. We may, at our election, assign this agreement or any of our rights hereunder.

14. (a) You warrant and represent that you are now a member in good standing of the American Federation of Television and Radio Artists, or will become a member within thirty (30) days after your first engagement with us, and that you will remain so during the term of this agreement.

(b) The provisions of the AFTRA National Code of Fair Practice for Phonograph Recordings are made a part of this agreement with the same force and effect as if fully set forth herein.

(c) If, by reason of illness, injury, accident or refusal to work, you fail to perform for us in accordance with the provisions of Paragraph 2 hereof or, if due wholly or partly to any labor controversy or adjustment thereof, or to any other cause not entirely within our control, or which we could not, by reasonable

-13-

diligence, have avoided, we are materially hampered in the recording, manufacture, distribution or sale of records, or our normal business operations become commercially impractical, then, without limiting our rights in any such event, we shall have the option, without liability, to suspend operation of Paragraph 2 and/or subparagraph 9 (a) of this agreement for the duration of any such contingency by giving you written notice thereof; and at our election, a period of time equal to the duration of such suspension shall be added at the end of the then current period of the term hereof, and then such period and the term of this agreement shall be accordingly extended.

15. If, during the term of this agreement we fail, except for reasons set forth in Paragraph 14 hereof, to record master recordings constituting the minimum number of record sides provided for herein and, if within thirty (30) days after the expiration of the term hereof you shall notify us by registered mail of your request that we record such of your performances as well as fulfill our minimum obligation hereunder, then we shall, at our option, within sixty (60) days after our receipt of such request, either record such performances or pay you at the rate of union scale in full settlement of our obligation in connection therewith. In the event that you do not so notify us within such thirty (30)-day period, then we shall be under no obligation to you for failure to record master recordings constituting such minimum number of record sides.

16. For purposes of this agreement:

(a) "Master recording" means any original recording, whether on magnetic tape or wire, a lacquer or wax disc, or on any other substance or material, whether now known or unknown, which is used in the manufacture of phonograph records;

(b) "Matrix" means any dye or mold or device which is now or hereafter used, directly or indirectly, in the manufacture of phonograph records and which is made from master recordings;

(c) "Person" or "party" include any individual, corporation, partnership, association or other organized group of persons or legal successors or representatives of the foregoing;

(d) "Records", "phonograph records" and "recordings" mean and include all forms of recording and reproductions, now known or which may hereafter become known, manufactured or sold primarily

-14-

for home use and/or jukebox use and/or use on transportation facilities, including, without limiting the generality of the foregoing, magnetic recording tape, film and any other medium or device for the reproduction of artistic performances manufactured or sold primarily for home use and/or jukebox use and/or use on transportation facilities, whether embodying:

- (i) sound alone; or
- (ii) sound synchronized with visual images, e.g., "sight and sound" devices;

(e) "Wholesale price" means:

(i) With respect to records sold hereunder for distribution in the United States of America, the average net price received from distributors for our phonograph records during the six-month period immediately preceding the applicable accounting period for the computation of the royalties to be made pursuant to sub-paragraph 9 (a) hereof, it being understood that a separate calculation of the average wholesale price shall be made for each price category of phonograph records manufactured and sold by us; and

(ii) With respect to records sold hereunder for distribution outside the United States of America, one-half ($\frac{1}{2}$) of the suggested retail list price or applicable list price (less container charges and local taxes, if any), as the case may be, of such records in, at our election, the country of manufacture, the United States of America or the country of sale;

(f) "Records sold" shall mean records shipped, paid for and not returned or exchanged. In the event records hereunder are shipped subject to a discount or merchandising plan, the number of records deemed to have been sold shall be determined by reducing the number of records shipped by the percentage of discount granted. In the event a discount is granted in the form of "free" or "bonus" merchandise, such "free" or "bonus" merchandise shall not be deemed included in the number of records sold. "Records sold" shall not include records given away or distributed for Fifty (50%) Per Cent or less of the regular wholesale price to distributors or others for promotion or exploitation purposes in connection with the inducement of sale of other records hereunder.

(g) "Merchandising rights" shall mean and include all rights with respect to printed material, endorsements and merchandising of commercial tie-ups, in connection with the manufacture, advertising and sale of physical property, including without limitation, toys, novelties, books, paper cut-outs, activity books, etc.; an

(h) As used in sub-paragraph 10(b) hereof, "net monies earned and received" shall mean the total amount received by us pursuant to sales (as that term is defined in sub-paragraph 10(b) hereof) of merchandising rights hereunder, after the deduction of all direct costs, expenses and commissions attributable to such sales, and after the deduction of any amounts which we may be required to pay, as expenses, commissions or otherwise, to third persons in connection with such sales, all of which are to be computed in accordance with our standard accounting practices and procedures.

(i) As used herein, "low-price" or "budget" labels shall mean any label used by us, our subsidiaries, affiliates, distributors or licensees, signifying that the records bearing such label carry a suggested retail list price substantially lower than the suggested retail list price for records bearing the standard label or labels used by us, our said subsidiaries, affiliates, distributors and/or licensees.

17. No failure by us to perform hereunder, and no act or failure to act shall be deemed a material breach of this contract unless you shall first deliver to us, and to the record company principally distributing your recordings in the United States, a written notice specifying the alleged failure to perform or the alleged act or alleged failure to act constituting such material breach, and we shall have failed to cure any such material breach within thirty (30) days after receipt by us of such notice from you. In the event we do not cure any such breach within the said thirty (30)-day interval, then it is specifically understood and agreed that this contract may be assigned to the said record company distributing your recordings in the United States, and such record company shall have an additional thirty (30)-day period to cure the said material breach in such event.

18. Any option to extend the term of this agreement, as hereinafter in this agreement granted to us, may be exercised by us by giving you notice in writing at least ten (10) days prior to the expiration of such term. Such notice to you may be given by delivery to you by mailing to you at your address last known to us. Such notice by mail shall be deemed to have been given on the date on which it is mailed.

-16-

19. You grant to us the option to extend the term of this agreement for a first additional period of one year upon all the terms and conditions herein contained, except that in respect of compositions performed by you and recorded by us during such period, the royalty rate set forth in Paragraph 7(a) hereof shall be Seven (7%) Per Cent in lieu of the rate therein set forth, and the minimum number of sides shall be eight (8).

20. If we have exercised the option granted in Paragraph 19 hereof, we shall have another option to extend the term of this agreement for a second additional period of one year upon all the terms and conditions herein contained, except that in respect of compositions performed by you and recorded by us during such additional period, the royalty rate set forth in Paragraph 7(a) hereof shall be Eight (8%) Per Cent in lieu of the rate therein set forth, and the minimum number of sides shall be eight (8).

21. If we have exercised the option granted in Paragraph 20 hereof, we shall have another option to extend the term of this agreement for a third additional period of one year upon all the terms and conditions herein contained, except that in respect of compositions performed by you and recorded by us during such additional period, the royalty rate set forth in Paragraph 7(a) hereof shall be Nine (9%) Per Cent in lieu of the rate therein set forth, and the minimum number of sides shall be eight (8).

22. If we have exercised the option granted in Paragraph 21 hereof, we shall have another option to extend the term of this agreement for a fourth additional period of one year upon all the terms and conditions herein contained, except that in respect of compositions performed by you and recorded by us during such additional period, the royalty rate set forth in Paragraph 7(a) hereof shall be Ten (10%) Per Cent in lieu of the rate therein set forth, and the minimum number of sides shall be eight (8).

-17-

23. We shall have the sole and exclusive control of the distribution of phonograph records produced hereunder and shall have the right to distribute, market and exploit the same directly or through any subsidiary, affiliate or licensee of ours or through any franchise holder, distributor, licensee or other person throughout the world.

24. It is acknowledged and agreed that certain recording costs and advances have not been recouped pursuant to a prior agreement with you with respect to which a release dated the 31st day of December, 1970, has been negotiated and executed by the parties thereto. It is agreed that the amount of such recording costs and/or advances, to the extent not recouped pursuant to the said prior agreement, shall be deemed an advance against and recoupable from any and all royalties payable pursuant hereto.

25. This agreement sets forth the entire agreement between the parties with respect to the subject matter hereof, and no modification, amendment, waiver, termination or discharge of this agreement or any other provision thereof shall be binding upon us unless confirmed by a written instrument signed by an officer of our company. No waiver of any provision of or default under this agreement shall affect our rights or remedy in the event of any other default, whether or not similar. The validity, construction and effect of this agreement, and any and all extensions and/or modifications thereof, shall be governed by the laws of the State of New York.

Very truly yours,

ASSORTED MUSIC, INC.

ACCEPTED AND AGREED:

David Beasley
David Beasley

Clarence E. Vaughn
Clarence E. Vaughn

James Tuten
James Tuten

Jennifer Holmes
Jennifer Holmes
p/k/a "Ebonys"

By Leon Huff

Parent or Guardian William Vaughn, Sr.

Parent or Guardian Ms. Jennifer Holmes

Parent or Guardian _____

Parent or Guardian _____

CERTIFICATE OF SERVICE

Amended petition to cancel a trademark registration

Cancellation #92057071

July 8, 2013

Registrant

Mr. William H. Howard

104 So. Glenwood Avenue

Aldan, PA 19018-4016

Email address

Whoward123@comcast.net

EXHIBIT C

**Evidence Submitted by David S. Beasley
in
Cancellation No. 92057071**

2

June 7, 1996

Artist Right Enforcement Crop
250 W. 57th Street
Suite 520
New York, New York

Mr. Chuck Rubin,

I am a member of the former singing group The Ebonys. Attached is a copy of my contract that was signed in January 1971. I have been referred to you by Bernie Wilson (The BlueNotes), to address the issue of royalties.

Attached find a list of songs that were released but not apart of the album, along with songs that were on the album.

I have been intouch with Clarence Vaughn & Jennifer Holmes Rossi in reference to contacting you (members). They are interested in hearing from you. If I can be of further assistance, please contact me.

Thank you in advance for your time. Looking forward to hearing from you in the near future.

David Beasley

attachments

ALBUM TITLE: THE EBONYS

SIDE I

HOOK UP AND GET DOWN
IT'S FOREVER
LIFE IN THE CONTRY
SEXY WAYS

SIDE II

I'M SO GLAD I'M ME
I'LL TRY
NATION TIME
I BELIEVE
YOU'RE THE REASON WHY

45 RELEASES

2 WRONGS DON'T MAKE A RIGHT
DETERMINATION
SORRY WE COULDN'T MAKE IT
CHRISTMAS JUST AIN'T CHRISTMAS (Without the One you Love)

Compact Disc has been released in the States, also Japan - 1995
See attached

Platinum Classic Recording has a Groove Me album with Ebony Recording on it.

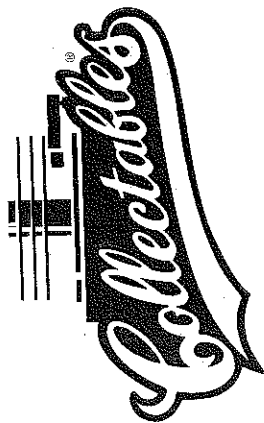
Ebony Members

Mr. Clarence Vaughn
728 Bentley Road
Lindenwold, NJ 08021
609-783-7135

Mrs. Jennifer Holmes Rossi
3753 King Avenue
Pennsauken, NJ 08105
609-663-8419

Mr. David Beasley
612 Timber Creek Condos
Lindenwold, NJ 08021
609-784-3037

Mr. James Tooten (deceased 1995)



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SEND FOR FREE CATALOG

COL-5659
Sony # A-26383

TheEbony's

S F S

Featuring
You're The Reason Why
It's Forever
I Believe
Plus Much More

Collectables

GOLDEN PHILLY CLASSICS

THE EBONYS - Golden Classics: Collectables 5659

The Ebonys have the distinction of scoring the first hit on Philadelphia International Records. The Camden, New Jersey, quartet was formed in the late '60s in their hometown, just across the Delaware River from Philadelphia. Initially restricted to playing local clubs, they got their big break when Leon Huff heard them perform.

Huff and his partner, Kenny Gamble, had already produced hits for artists like The Intruders and Jerry Butler. They had even tried to start a couple of their own labels, but were discouraged by the lack of promotion, especially after a bitter experience with Chess Records, which had handled their Neptune label.

Despite their problems with bigger companies, Gamble and Huff were still convinced their unique blend of funky rhythm and blues with sophisticated, highly orchestrated musical backgrounds could find a large audience. They finally signed with one of the biggest labels in the world, cutting a deal with Columbia Records in 1971 to distribute and market their Philadelphia International label.

The first few P.I. singles didn't set the charts on fire. But they did a lot better with Philadelphia International 3503. "You're The Reason Why" was written by Gamble and Huff and arranged by the accomplished Thom Bell. The dramatic ballad was a perfect vehicle for The Ebonys. It featured the haunting voice of Jennifer Holmes at the beginning of the song before she gave way to the rest of the group and their tormented emotionalism. Holmes, along with David Beasley, James Tuten and Clarence Vaughn, saw their powerful debut soar into the Billboard rhythm and blues Top 10 in the early summer of 1971. It also just missed the pop Top 50.

Gamble and Huff continued to work with their newest hitmakers, but subsequent singles didn't fare as well as their debut. The strong "Determination" (P.I. 3510) made it into the R&B Top 50 in late 1971. They did better with "It's Forever" (P.I. 3529), a classic soul ballad written by Leon Huff, that went to No. 14 on the R&B chart in the spring of 1973.

The group scored one more Philadelphia International hit. "Life In The Country" (P.I. 3548) went to No. 69 on the R&B charts in the fall of '74. Their one Philadelphia International album - "The Ebonys" - is the source for much of the material on this collection of their best work.

After leaving the Gamble-Huff operation, The Ebonys did score one more minor hit. They went to No. 83 in the fall of 1976 with "Making Love Ain't No Fun (Without The One You Love)" on Buddah 537.

After the hits slowed down The Ebonys drifted apart. But Jennifer Holmes did have another run of success as a member of the Philly-based quartet Creme D'Cocoa, which scored four hits in the late '70s for the Venture label. Their biggest success was "Doin' The Dog" (Venture 112), which went to No. 30 on the Billboard R&B chart.

While The Ebonys will always have the distinction of being the first hit act on Philadelphia International, it's clear from the material on this album that their success was no fluke. Jennifer Holmes and her three partners were fine singers and they did a very good job with the songs Gamble and Huff gave them. This is a tribute to the unique talent of both the singers and their producers.

--MARK MARYMONT

Billboard chart numbers courtesy of Joel Whitburn's Record Research.

**NICE PRICE LINE 30
PHILADELPHIA
INTERNATIONAL RECORDS**

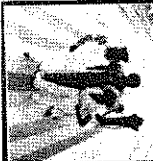
¥1,800 (税込)
好評発売中

SUPER HITS

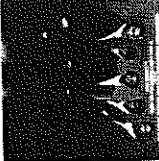
**INTRUDERS
SUPER-HITS**



THE EBONYS



HAROLD MELVIN & THE BLUE NOTES



HAROLD MELVIN & THE BLUE NOTES



360 DEGREES OF BILLY PAUL



IN PHILADELPHIA



THE O'JAYS

1. \mathcal{A} is a σ -algebra on Ω .
 2. \mathbb{P} is a probability measure on \mathcal{A} .
 3. \mathbb{P} is a probability measure on \mathcal{A} .
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 8. \mathbb{P} is a probability measure on \mathcal{A} .
 9. \mathbb{P} is a probability measure on \mathcal{A} .
 10. \mathbb{P} is a probability measure on \mathcal{A} .

[illegible][illegible]

歌詞対訳：根岸修子



DAVID BEASLEY

CLARENCE
VANDERWIL

WILLIAM
TUTEN

JENNIFER
HOMES
ROZZI

THE EBONYS



Kayden Productions, Inc.
13 W. PARK AVENUE
MERCANTVILLE, N. J. 08859





**NEW JERSEY DEPARTMENT OF STATE
DIVISION OF COMMERCIAL RECORDING
ORIGINAL APPLICATION TO REGISTER
A TRADE OR SERVICE MARK**

This form may be used by applicants seeking to register a State trade or service mark pursuant to NJSA 36. Applicants are responsible for strict adherence to all requirements set forth in State law. (PLEASE REFER TO INSTRUCTIONS ON REVERSE SIDE)

1. Mark Type: (check one) Trade Mark XXXX Service Mark
2. Name and Description of Mark: (list the term that constitutes the mark or, in the case of a design mark, provide a brief description of its appearance)

THE EBONY'S

3. Description Of The Goods Or Services Involved:

ENTERTAINMENT/SINGING

4. Classification Number(s): (Minimum of one)

5. Applicant Information:

- a. Name: DAVID S. BEASLEY
- b. Business Address: 612 TIMBERCREEK CONDOS
LINDENWOLD, NJ 08021
- c. Applicant is: (check one) xx An Individual Corporation Partnership Other Business Entity
- d. If applicant is a corporation, partnership or other business entity, list the home state:
N/A
- e. If applicant is a partnership, list the names of all general partners:
N/A

6. Assignee Information: (if applicable, provide assignee name/address)

- a. Name: N/A
- b. Address:

7. Dates: Date First Used in New Jersey (must be entered) 1969 Date First Used Elsewhere: 1969

8. Signature(s) and Statement of Ownership: (verification required)

The applicant attests that he or she is the owner of the mark, and that the mark is in use in this State, and that, to his or her knowledge, no other person has registered the mark, either with the US Patent and Trade Mark office or with the Secretary of State, or has the right to use the mark or a mark in such near resemblance as to be likely, when used in connection with the goods or services of such other person, to cause confusion, to to cause mistake, or to deceive.

David Beasley
(Signature of Applicant, or a Member of the Firm,
or an Officer of the Corporation or Business Applying)

5/16/97
(Date)

(Assignee, if Applicable)

(Date)

Subscribed and sworn to before me, Rose D. Giuffre, a Notary Public,
this 16th day of May A.D. 1997.

Rose D. Giuffre
(Notary Public)

"ROSE D. GIUFFRE
Notary Public of New Jersey
My Commission Expires 11/28/98"

Note: Attach to this application: 1) a drawing of the mark; and 2) three (3) specimens showing the mark as actually used.

3b.
I, THE TREASURER THE STATE OF NEW JERSEY, DO HEREBY
CERTIFY THAT

DAVID S. BEASLEY
612 TIMBER CREEK CONDOS
LINDENWOLD NJ 08021

DID ON THE 7TH DAY OF MARCH A.D. 2003 FILE IN THIS
DEPARTMENT

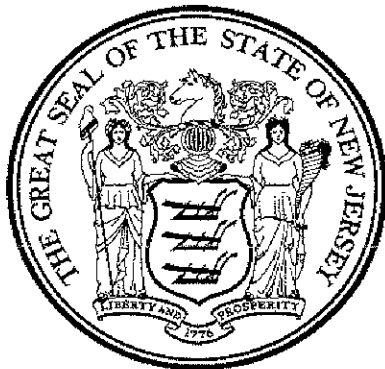
SERVICE MARK
MARK REG NUM : 21286

THE EBONYS
ENTERTAINMENT/SINGING GROUP

CLASSIFICATION GROUP : SERVICES
CLASS : 041 EDUCATION AND ENTERTAINMENT

RENEWAL DATE: 03/19/2013
EXPIRATION DATE: 03/07/2018
DATE OF FIRST USE IN NEW JERSEY: 01/01/1969
DATE IN USE ELSEWHERE: 01/01/1969

AS BY THE STATUTES OF THIS STATE REQUIRED.



IN TESTIMONY WHEREOF, I HAVE
HEREUNTO SET MY HAND AND AFFIXED
MY OFFICIAL SEAL AT TRENTON, THIS
19TH DAY OF MARCH
A.D. 2013 .

Andrew P Sidamon-Eristoff
State Treasurer

Certificate Number: 127767183

Verify this certificate online at

http://www1.state.nj.us/TYTR_StandingCert/JSP/Verify_Cert.jsp

(4)



**Philadelphia
International
Records**

May 20, 2010

The Ebonys
c/o David Beasley
1801 Laurel Road
Lindenwold, NJ 08021

Re: Royalty Statement for PE 12/31/09

Mr. Beasley,

Enclosed please find the most current Ebonys Royalty Statement for *Period Ending December 31, 2009* for The Ebonys. Thank you for providing us the necessary contact information needed for future Ebonys royalty statements. Pursuant to our email and phone correspondence, it is our understanding that you are an official and legal representative of the group and are authorized to receive information on the group's behalf.

For any further questions, please give us a call at (215) 985-0900.

Sincerely,

Charles B. Gamble
Executive Vice President
Philadelphia International Records

Cc: Royalty Administration

ASSORTED MUSIC, INC.

250 South Broad Street

Philadelphia, Pennsylvania 19102

January 1, 1971

Messrs. David Beasley, Clarence
E. Vaughn, James Tuten and
Miss Jennifer Holmes
p/k/a "Ebonys"
c/o Gerald Wilson
403 Parry Road
Cinnaminson, New Jersey

Dear Sirs and Miss Holmes:

The following, when signed by you and us, will constitute the agreement between you and us, pursuant to which you will perform exclusively for us as a recording artist, upon the terms and conditions herein set forth:

1. This agreement shall commence as of the date January 1, 1971, and shall continue in force for a term which shall consist of an initial period of one (1) year from such date, and the additional period or periods, if any, by which such term may be extended through our exercise of one or more of the options granted to us herein.

2. During the term of this agreement, you will render your services at recording sessions at studios selected by us, at times and places to be designated by us, for the purpose of making phonograph records. The musical compositions to be recorded shall be designated by us, and each master recording made hereunder shall be subject to our approval as satisfactory for the manufacture and sale of records. During the initial period of the term hereof, you will perform for the recording of satisfactory master recordings which shall consist of a minimum of four (4) 45 r.p.m. sides, or their equivalent, and we will record your performances. Additional master recordings shall be performed by you and recorded by us at our election.

-2-

3. During the term of this agreement you will not perform for the purpose of making phonograph records or master recordings for any person other than us, and during a period of five (5) years after the expiration of the term of this agreement, for any reason whatsoever, you will not perform any musical composition which shall have been recorded hereunder for any person other than us for the purpose of making phonograph records or master recordings. It is agreed between you and us that your services to be rendered hereunder are of a special, unique, unusual, extraordinary and intellectual character, involving skill of the highest order, which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated by damages in an action at law, and that your breach of any of the provisions contained in this agreement shall cause us irreparable damage and injury. You hereby expressly agree that we will be entitled to injunctive relief and other equitable relief to prevent or cure any breach or threatened breach of this agreement by you.

4. All master recordings recorded hereunder and all matrices and phonograph records manufactured therefrom, together with the performances embodied thereon, shall be entirely our property, free from any claims whatsoever by you or any person deriving any rights or interests from you. Without limiting the generality of the foregoing, we and/or our subsidiaries, affiliates and licensees shall have the unlimited right, from time to time, to manufacture by any method now or hereafter known phonograph records and other reproductions on any mediums or devices now or hereafter known, of the master recordings made hereunder, and to sell, transfer or otherwise deal in the same throughout the world under any trademark, trade name and label, or to refrain from such manufacture, sale and dealing.

5. At our election, all compositions recorded pursuant to this or any other agreement between you and us which are written or composed by you or owned or controlled by you or any party which is allied or affiliated with you or in which you have a direct or indirect interest, shall be licensed to us at a royalty rate of 1-1/2 cents per 45 r.p.m. record side, or its equivalent, on the basis of Ninety (90%) Per Cent of net sales of records, except that (i) with respect to records sold

-3-

and/or distributed as "bonus" or "free" records through "Club Operation" (as defined in sub-paragraph 8 (b) of this agreement), the royalty rate shall be three-fourths (3/4ths) of the rate set forth above, payable on the basis of Ninety (90%) Per Cent of net sales of records; and (ii) no copyright royalties shall be payable with respect to records described in sub-paragraph 8 (f) hereof. Arranged versions of musical compositions in the public domain, when furnished by you or any party described above for recordings hereunder, shall be free of copyright royalties. Any assignment made of the ownership or copyright in any such composition or in any such arranged version of a musical composition in the public domain shall be made subject to the provisions hereof. In the event we are required to pay mechanical copyright royalties in excess of those provided in this Paragraph 5, we shall have the right to charge such excess against all royalties or other sums payable to you hereunder.

6. (a) For your services rendered hereunder, and for the rights granted herein to us, we will make a non-returnable payment to you, within fourteen (14) days after the services are rendered at each recording session, at the rate of union scale; and each such payment shall constitute an advance and shall be charged against your royalties under this and/or any other agreement between you and us, if and when earned. Without limiting the generality of the foregoing, included amount payments which shall hereunder constitute advances chargeable against royalties shall be all amounts which are paid by us pursuant to the requirements of any collective bargaining agreement between us and any union representing you for performances hereunder.

(b) We shall specify your accompaniment (instrumental and vocal), arrangements and copying and studio charges and/or rentals in respect of master recordings made hereunder, and we shall pay the costs of such accompaniment as well as the costs of such arrangements and copying and studio charges and/or rentals which are specifically undertaken in respect of such master recordings (such costs are hereinafter collectively referred to as "Accompaniment Costs"); and all such Accompaniment Costs so paid by us shall constitute advances and shall be charged against your royalties earned. Without limiting the generality of the foregoing, including among Accompaniment Costs,

which shall hereunder constitute advances chargeable against royalties, shall be all amounts which are paid by us pursuant to the requirements of any collective bargaining agreements between us and any union representing other persons who render services hereunder or in connection with any accompaniment (instrumental and vocal), arrangements and copying and studio charges and/or rentals for performances hereunder.

7. (a) We will pay you a basic royalty of (i) Six (6%) Per Cent of the applicable wholesale price (less all taxes) in respect of Ninety (90%) Per Cent of all phonograph records consisting entirely on both sides thereof a composition or compositions performed by you and recorded hereunder, manufactured and sold by us or by any subsidiary, affiliate or licensee to whom we have supplied a copy or duplicate of a master or a matrix of or embodying such composition or compositions; and (ii) one-half ($\frac{1}{2}$) of such percentage of the applicable wholesale price (less all taxes) in respect of Ninety (90%) Per Cent of all phonograph records consisting entirely of such composition or compositions on only one side thereof, so manufactured and sold. In computing the number of records manufactured and sold hereunder, we shall have the right to deduct returns and credits of any nature, including, without limitation, those on account of One Hundred (100%) Per Cent return privileges, defective merchandise, exchange privilege, promotional credits, error in billing, usable overstock and error in shipment.

(b) Royalties for records sold for distribution outside of the United States of America shall be computed in the national currency, at our election, of the country of manufacture, the country of sale of the United States of America, and as to sales made for distribution outside of the United States of America, shall be paid at the same rate of exchange as we are paid; provided, however, that royalties on records sold for distribution outside of the United States of America shall not be due and payable until payment therefor has been received by us in the United States of America, and provided further, that if we do not receive payment in United States dollars currently and elect to accept payment in a foreign currency, we may deposit to your account (and at your expense) in such currency in a depository selected by us, all payments so received as royalties applicable to this agreement, and shall notify you thereof promptly. Such deposit, as above stated, shall fulfill our obligation hereunder

as to record sales to which such royalty payments are applicable.

(c) With respect to any master recording embodying your performance hereunder, together with the performance of another artist or artists to whom we are obligated to pay royalties in respect of phonograph records embodying the joint performances contained on such master recording:

(i) the royalty rate to be used in determining the royalties payable to you in respect of such master recording shall be computed by multiplying the royalty rate otherwise applicable thereto by a fraction, the numerator of which shall be one and the denominator of which shall be the total number of royalty artists whose performances are embodied on such master recording; and

(ii) in determining the portion of the Accompaniment Costs applicable to such master recording which shall be charged against your royalties if and when earned, such portion shall be computed by multiplying the aggregate amount of such Accompaniment Costs by the same fraction used in determining the royalties payable to you in respect of such master recording.

(d) With respect to a side of a long-playing (33-1/3 r.p.m.) or extended-play microgroove record, which embodies on such side performances contained on another master recording(s) in addition to the performances contained on a master recording(s) recorded hereunder, the royalty payable to you in respect of such record side shall be computed by basing the rate provided in sub-paragraph 7(a) (ii) (or other applicable rate) upon that proportion of the applicable wholesale price (less all taxes) of such record that the number of 45 r.p.m. sides required to embody your performances recorded hereunder on such record side bears to the total number of 45 r.p.m. sides required to embody the total number of performances on such record side.

(e) With respect to all phonograph records sold hereunder, royalties on phonograph records included in albums, jackets, cartridges, cassettes, boxes or any other type of package or container (herein collectively referred to as "container(s)") shall be

based solely upon the applicable wholesale price of such phonograph records in containers less all taxes and also less a container charge not to exceed Ten (10%) Per Cent of the applicable price of disc phonograph records and Twenty-five (25%) Per Cent with respect to all other forms of records as defined in sub-paragraph (e) (i) or (e) (ii), as the case may be, of Paragraph 16 hereof.

8. Notwithstanding anything to the contrary contained in this or any other agreement between you and us, the following shall apply with respect to phonograph records manufactured pursuant to this or any other such agreement and sold and/or distributed in the manner set forth hereinbelow:

(a) In respect of phonograph records sold for distribution outside of the United States of America, the royalty rate payable to you therefor shall be equal to one-half ($\frac{1}{2}$) of the applicable royalty rate which would have been payable to you therefor if such records had been sold for distribution in the United States of America.

(b) In respect of phonograph records sold through any direct mail order operation or through any direct sales-to-consumer operation carried on by us, our subsidiaries, affiliates or licensees including, without limitation, any Record or Tape Club (herein collectively referred to as "Club Operation"), the royalty rate shall be one-half ($\frac{1}{2}$) of the otherwise applicable royalty rate. Notwithstanding the preceding sentence, if such phonograph records are sold through any such Club Operation at a price (excluding postage and handling charges) of One (\$1.00) Dollar or less, the royalty rate payable to you in respect of such phonograph records if they had been sold through such Club Operation at a price of more than One (\$1.00) Dollar and, notwithstanding anything to the contrary contained in this agreement, such royalty rate shall be computed on the basis of the actual sales price charged by such Club Operation for such phonograph records (excluding postage and handling charges). Notwithstanding anything contained in the foregoing two sentences or elsewhere in this agreement, no royalty shall be payable to you with respect to (i) phonograph records which are received

by members of any such Club Operation, either in an introductory offer in connection with such Club Operation or upon recommending that another join such Club Operation and/or as a result of the purchase of a required number of records, including, without limitation, records distributed as "bonus" and/or "free" records, or (ii) phonograph records for which such Club Operation is not paid.

(c) In respect of phonograph records sold to our clients for promotional, sales incentives or educational purposes or phonograph records sold to educational institutions or libraries, the royalty rate payable to you therefor shall be one-half (1/2) the royalty rate otherwise payable and shall be computed on the basis of the actual sales price therefor (less all taxes and container charges) to any of the foregoing.

(d) In respect of phonograph records sold in the form of pre-recorded tape, the royalty rate payable to you therefor shall be one-half (1/2) of the applicable royalty rate otherwise payable if such record(s) were sold in disc form.

(e) In respect of phonograph records sold on a "low-price" or "budget" label, the royalty rate shall be one-half (1/2) the applicable rate otherwise payable.

(f) No royalty shall be payable to you in respect of phonograph records sold as "cut-outs" after the listing of such records has been deleted from our catalog or in respect of phonograph records distributed as "free" or "no-charge" records or records sold and/or distributed to radio stations or for use on transportation facilities to promote or stimulate the sale of phonograph records embodying your performances.

9. In respect of the royalties provided for herein:

(a) We will compute royalties payable to you hereunder within sixty (60) days after June 30 and after December 31 of each year during which records made hereunder are sold for the preceding six (6)-month period, and will render accountings for and pay such royalties, less any unrecouped advances under this and/or any other agreement between you and us, within such sixty (60) days, except as provided in sub-paragraph 7(b) hereof, and except with respect to sales of records upon which royalties are payable to us by a distributor thereof. We shall be responsible for payment of your royalties on such sales only after receipt by us from such distributor of the royalties applicable to such sales.

-8-

(b) All royalty statements and all other accounts rendered by us to you hereunder shall be binding upon you and not subject to any objection by you for any reason whatsoever unless specific objection in writing, stating the basis thereof, is given to us within six (6) months from the date rendered. Notwithstanding anything to the contrary contained herein, we shall be under no obligation to account to you in respect of, and/or pay to you, sums of Fifty (\$50.00) Dollars or less, unless we receive a written demand from you for such an accounting and payment.

10. (a) We shall have the right to use and to allow others to use your name and likeness and biographical material concerning you for advertising and purposes of trade, and otherwise without restriction, in connection with the phonograph records made pursuant to this agreement and in advertisements for our company, its artists and products. We shall not use or authorize any direct endorsement by you of any record or performance without your prior written consent. During the term of this agreement, you shall not endorse or authorize your name or likeness to be used in connection with the advertising or sale of products in the same category as those which are currently manufactured and sold by or for us.

(b) Without limiting the provisions of sub-paragraph 10(a) hereof, you hereby grant to us, during the term of this agreement, the exclusive right, throughout the world, to authorize the use of your name and/or likeness and/or biographical material concerning you, whether alone or in conjunction with other elements, in connection with the sale, lease, license or other disposition (herein collectively referred to as "sale(s)") of merchandising rights and to enter into agreements covering such sales. It is expressly understood and agreed that any contract entered into by us for such a sale during the term of this agreement shall continue in full force and effect in accordance with the provisions thereof, but after the termination of the term of this agreement, we shall have no right to enter into a new contract to make any new sale authorizing the use of your name and/or likeness after the termination of the term of this agreement. For the rights granted by this sub-paragraph we will pay you, in United States dollars, Fifty (50%) Per Cent of the net monies earned and received by us in the United States of America from such sales of merchandising rights authorizing the use of your name and/or likeness and/or biographical material concerning you pursuant to this agreement.

-9-

(c) You warrant and represent that you own all rights in and to the name "Ebonys" (hereinafter referred to as the "Name"), and that you have the sole and exclusive right to use and to allow others to use the Name in connection with the manufacture, advertising and sale of phonograph records. You hereby grant to us, and further warrant and represent, that we shall have the right to use and to allow others to use the Name for advertising and purposes of trade and otherwise without restriction in connection with the phonograph records made pursuant to this agreement and in advertisements for our company, its artist and products and exclusively in connection with the merchandising rights to the same extent and on the same terms and conditions as set forth herein with respect to your names. It is understood and agreed that (i) during the term of this agreement you will not authorize or knowingly permit any performance by any person or persons who shall in any way be identified with the Name (or any name substantially similar thereto) for the purpose of making phonograph records for any person other than us, and (ii) during a period of five (5) years after the expiration of the term of this agreement, for any reason whatsoever, you will not authorize or knowingly permit the performance by any person or persons who shall in any way be identified with the Name (or any name substantially similar thereto) of any compositions recorded hereunder for any person other than us for the purpose of making phonograph records. It is further understood and agreed that you will not at any time manufacture, distribute or sell or authorize or knowingly permit the manufacture, distribution or sale by any person other than us of phonograph records embodying (i) the performances by any person or persons rendered during the term of this agreement, or (ii) the performance by any person or persons of a composition recorded hereunder rendered within five (5) years after the expiration of the term of this agreement, which phonograph records and/or performances shall in any way be identified with the Name or any name substantially similar thereto. You acknowledge that any use of the Name (or any name substantially similar thereto) contrary to the provisions hereof would cause us irreparable injury, and you agree to use your best efforts in assisting us to prevent any such use.

(d) In the event that during the term of this agreement any artist shall leave the group hereunder identified with the Name and/or shall cease to perform as a member of such group, you shall promptly give us notice in writing to such effect and in the event we shall deem it advisable, such leaving member shall be replaced by a new member who shall be mutually acceptable; and the

-10-

name of such new member shall thereafter be deemed substituted in this agreement in the place of such leaving member, and such new member, by performing hereunder, shall automatically be bound by all the terms and conditions of this agreement. Upon our request therefor, the remaining members of the group will duly cause any such new member to execute and deliver to us such document as we, in our judgment, may deem necessary or expedient to carry out or effectuate the purpose or intent of the foregoing sentence. Such leaving member shall thereafter be relieved from further performances hereunder with the group, but shall continue to be bound individually by the applicable provisions of this agreement including, without limitation, the provisions set forth in subparagraphs 10(e) and 3 hereof.

(e) You warrant and represent that, in the event any one or more of the artists shall so leave the group as provided in sub-paragraph 10(d) hereof, we shall have, and you and each of you does hereby grant to us, and irrevocable option on your individual and exclusive services for the purpose of making phonograph records. Such option, with respect to any such leaving member, may be exercised by us by giving such leaving member notice in writing within ninety (90) days after our receipt of the notice provided for in said sub-paragraph 10(d); and, in the event of our such exercise of option, such leaving member shall execute our then current standard form of term recording contract containing the following provisions:

(i) a term consisting of not less than the remaining balance of the term of this agreement as it may be extended by our exercise of the options granted to us herein;

(ii) a minimum of four (4) 45 r.p.m. record sides or their equivalent for which satisfactory master recordings will be performed and recorded during each year of such term, it being understood and agreed that if the remaining balance of the term of this agreement shall be less than six (6) months, then the minimum number of such 45 r.p.m. record sides for which master recordings will be performed and recorded during such remaining balance of the term shall be one-half ($\frac{1}{2}$) of the foregoing number;

(iii) a royalty in respect of phonograph records embodying performances recorded during such term at the rates set forth in Paragraphs 7 and 8 of this agreement; and

-11-

(iv) a payment for services rendered at each recording session at the rate of union scale, which payment shall constitute advances chargeable against such royalties.

In the event that during the term of this agreement the group shall completely disband, you shall promptly give us notice in writing to such effect, and, in such event, the provisions of this sub-paragraph 10(e) shall be applicable with respect to each member of the group.

(f) As to all matters contained in this agreement to be determined by mutual agreement between you and us, or as to which your approval or consent is required, you shall not unreasonably withhold such agreement, approval or consent. Your duties, liabilities, obligations, warranties, representations, authorizations and agreements contained in this agreement are joint and several and all references herein to "you" and "your" in connection therewith shall include all of you inclusively and each of you individually, unless otherwise specified.

11. You will not, at any time, manufacture, distribute or sell or authorize or knowingly permit the manufacture, distribution or sale by any person other than us of phonograph records embodying:

(a) any performance rendered by you during the term of this agreement; or

(b) any performance rendered by you within five (5) years after the expiration of the term of this agreement of a composition which shall have been recorded pursuant to this agreement.

You will not record or authorize or knowingly permit to be recorded for any purpose any such performances without in each case taking reasonable measures to prevent the manufacture, distribution and sale at any time by any person other than us of phonograph records embodying such performances. Specifically, without limiting the generality of the foregoing, you agree:

(a) if, during the term of this agreement you perform for the purpose of making transcriptions for radio or television or soundtracks for motion picture films; or

(b) if, within five (5) years after the expiration of the term of this agreement you perform for any such purpose any composition which shall have been recorded pursuant to this agree-

-12-

you will do so only pursuant to a written contract containing an express provision that neither such performance nor any recording thereof will be used, directly or indirectly, for the purpose of making phonograph records.

You will promptly furnish to us, at our Philadelphia office, a copy of the pertinent provisions of each such contract and will cooperate fully with us in any controversy which may arise or litigation which may be brought relating to our rights under this paragraph.

12. You warrant and represent that you are under no disability, restriction or prohibition in respect of (a) your right to execute this agreement and perform its terms and conditions, and more particularly, (b) your right to perform for the recording of any and all compositions hereunder, except to the extent, if any, set forth in Schedule I attached hereto and made a part hereof. You agree to and do hereby indemnify, save and hold us harmless from loss or damage (including reasonable attorneys fees) arising out of or connected with any claim by a third party which is inconsistent with any of the warranties or representations made by you in this agreement. You will reimburse us on demand for any payment made by us at any time after the date hereof in respect of any liability or claim to which the foregoing indemnity relates.

13. We may, at our election, assign this agreement or any of our rights hereunder.

14. (a) You warrant and represent that you are now a member in good standing of the American Federation of Television and Radio Artists, or will become a member within thirty (30) days after your first engagement with us, and that you will remain so during the term of this agreement.

(b) The provisions of the AFTRA National Code of Fair Practice for Phonograph Recordings are made a part of this agreement with the same force and effect as if fully set forth herein.

(c) If, by reason of illness, injury, accident or refusal to work, you fail to perform for us in accordance with the provisions of Paragraph 2 hereof or, if due wholly or partly to any labor controversy or adjustment thereof, or to any other cause not entirely within our control, or which we could not, by reasonable

-13-

diligence, have avoided, we are materially hampered in the recording, manufacture, distribution or sale of records, or our normal business operations become commercially impractical, then, without limiting our rights in any such event, we shall have the option, without liability, to suspend operation of Paragraph 2 and/or subparagraph 9 (a) of this agreement for the duration of any such contingency by giving you written notice thereof; and at our election, a period of time equal to the duration of such suspension shall be added at the end of the then current period of the term hereof, and then such period and the term of this agreement shall be accordingly extended.

15. If, during the term of this agreement we fail, except for reasons set forth in Paragraph 14 hereof, to record master recordings constituting the minimum number of record sides provided for herein and, if within thirty (30) days after the expiration of the term hereof you shall notify us by registered mail of your request that we record such of your performances as well as fulfill our minimum obligation hereunder, then we shall, at our option, within sixty (60) days after our receipt of such request, either record such performances or pay you at the rate of union scale in full settlement of our obligation in connection therewith. In the event that you do not so notify us within such thirty (30)-day period, then we shall be under no obligation to you for failure to record master recordings constituting such minimum number of record sides.

16. For purposes of this agreement:

(a) "Master recording" means any original recording, whether on magnetic tape or wire, a lacquer or wax disc, or on any other substance or material, whether now known or unknown, which is used in the manufacture of phonograph records;

(b) "Matrix" means any dye or mold or device which is now or hereafter used, directly or indirectly, in the manufacture of phonograph records and which is made from master recordings;

(c) "Person" or "party" include any individual, corporation, partnership, association or other organized group of persons or legal successors or representatives of the foregoing;

(d) "Records", "phonograph records" and "recordings" mean and include all forms of recording and reproductions, now known or which may hereafter become known, manufactured or sold primarily

-14-

for home use and/or jukebox use and/or use on transportation facilities, including, without limiting the generality of the foregoing, magnetic recording tape, film and any other medium or device for the reproduction of artistic performances manufactured or sold primarily for home use and/or jukebox use and/or use on transportation facilities, whether embodying:

- (i) sound alone; or
- (ii) sound synchronized with visual images, e.g., "sight and sound" devices;

(e) "Wholesale price" means:

(i) With respect to records sold hereunder for distribution in the United States of America, the average net price received from distributors for our phonograph records during the six-month period immediately preceding the applicable accounting period for the computation of the royalties to be made pursuant to sub-paragraph 9 (a) hereof, it being understood that a separate calculation of the average wholesale price shall be made for each price category of phonograph records manufactured and sold by us; and

(ii) With respect to records sold hereunder for distribution outside the United States of America, one-half ($\frac{1}{2}$) of the suggested retail list price or applicable list price (less container charges and local taxes, if any), as the case may be, of such records in, at our election, the country of manufacture, the United States of America or the country of sale;

(f) "Records sold" shall mean records shipped, paid for and not returned or exchanged. In the event records hereunder are shipped subject to a discount or merchandising plan, the number of records deemed to have been sold shall be determined by reducing the number of records shipped by the percentage of discount granted. In the event a discount is granted in the form of "free" or "bonus" merchandise, such "free" or "bonus" merchandise shall not be deemed included in the number of records sold. "Records sold" shall not include records given away or distributed for Fifty (50%) Per Cent or less of the regular wholesale price to distributors or others for promotion or exploitation purposes in connection with the inducement of sale of other records hereunder.

(g) "Merchandising rights" shall mean and include all rights with respect to printed material, endorsements and merchandising of commercial tie-ups, in connection with the manufacture, advertising and sale of physical property, including without limitation, toys, novelties, books, paper cut-outs, activity books, etc.; an

(h) As used in sub-paragraph 10(b) hereof, "net monies earned and received" shall mean the total amount received by us pursuant to sales (as that term is defined in sub-paragraph 10(b) hereof) of merchandising rights hereunder, after the deduction of all direct costs, expenses and commissions attributable to such sales, and after the deduction of any amounts which we may be required to pay, as expenses, commissions or otherwise, to third persons in connection with such sales, all of which are to be computed in accordance with our standard accounting practices and procedures.

(i) As used herein, "low-price" or "budget" labels shall mean any label used by us, our subsidiaries, affiliates, distributors or licensees, signifying that the records bearing such label carry a suggested retail list price substantially lower than the suggested retail list price for records bearing the standard label or labels used by us, our said subsidiaries, affiliates, distributors and/or licensees.

17. No failure by us to perform hereunder, and no act or failure to act shall be deemed a material breach of this contract unless you shall first deliver to us, and to the record company principally distributing your recordings in the United States, a written notice specifying the alleged failure to perform or the alleged act or alleged failure to act constituting such material breach, and we shall have failed to cure any such material breach within thirty (30) days after receipt by us of such notice from you. In the event we do not cure any such breach within the said thirty (30)-day interval, then it is specifically understood and agreed that this contract may be assigned to the said record company distributing your recordings in the United States, and such record company shall have an additional thirty (30)-day period to cure the said material breach in such event.

18. Any option to extend the term of this agreement, as hereinafter in this agreement granted to us, may be exercised by us by giving you notice in writing at least ten (10) days prior to the expiration of such term. Such notice to you may be given by delivery to you by mailing to you at your address last known to us. Such notice by mail shall be deemed to have been given on the date on which it is mailed.

-16-

19. You grant to us the option to extend the term of this agreement for a first additional period of one year upon all the terms and conditions herein contained, except that in respect of compositions performed by you and recorded by us during such period, the royalty rate set forth in Paragraph 7(a) hereof shall be Seven (7%) Per Cent in lieu of the rate therein set forth, and the minimum number of sides shall be eight (8).

20. If we have exercised the option granted in Paragraph 19 hereof, we shall have another option to extend the term of this agreement for a second additional period of one year upon all the terms and conditions herein contained, except that in respect of compositions performed by you and recorded by us during such additional period, the royalty rate set forth in Paragraph 7(a) hereof shall be Eight (8%) Per Cent in lieu of the rate therein set forth, and the minimum number of sides shall be eight (8).

21. If we have exercised the option granted in Paragraph 20 hereof, we shall have another option to extend the term of this agreement for a third additional period of one year upon all the terms and conditions herein contained, except that in respect of compositions performed by you and recorded by us during such additional period, the royalty rate set forth in Paragraph 7(a) hereof shall be Nine (9%) Per Cent in lieu of the rate therein set forth, and the minimum number of sides shall be eight (8).

22. If we have exercised the option granted in Paragraph 21 hereof, we shall have another option to extend the term of this agreement for a fourth additional period of one year upon all the terms and conditions herein contained, except that in respect of compositions performed by you and recorded by us during such additional period, the royalty rate set forth in Paragraph 7(a) hereof shall be Ten (10%) Per Cent in lieu of the rate therein set forth, and the minimum number of sides shall be eight (8).

-17-

23. We shall have the sole and exclusive control of the distribution of phonograph records produced hereunder and shall have the right to distribute, market and exploit the same directly or through any subsidiary, affiliate or licensee of ours or through any franchise holder, distributor, licensee or other person throughout the world.

24. It is acknowledged and agreed that certain recording costs and advances have not been recouped pursuant to a prior agreement with you with respect to which a release dated the 31st day of December, 1970, has been negotiated and executed by the parties thereto. It is agreed that the amount of such recording costs and/or advances, to the extent not recouped pursuant to the said prior agreement, shall be deemed an advance against and recoupable from any and all royalties payable pursuant hereto.

25. This agreement sets forth the entire agreement between the parties with respect to the subject matter hereof, and no modification, amendment, waiver, termination or discharge of this agreement or any other provision thereof shall be binding upon us unless confirmed by a written instrument signed by an officer of our company. No waiver of any provision of or default under this agreement shall affect our rights or remedy in the event of any other default, whether or not similar. The validity, construction and effect of this agreement, and any and all extensions and/or modifications thereof, shall be governed by the laws of the State of New York.

Very truly yours,

ASSORTED MUSIC, INC.

ACCEPTED AND AGREED:

David Beasley
David Beasley

Clarence E. Vaughn
Clarence E. Vaughn

James Tuten
James Tuten

Jennifer Holmes
Jennifer Holmes
p/k/a "Ebonys"

By Leon Huff

Parent or Guardian William Vaughn, Sr.

Parent or Guardian Ms. Jennifer Holmes

Parent or Guardian _____

Parent or Guardian _____

CERTIFICATE OF SERVICE

Amended petition to cancel a trademark registration

Cancellation #92057071

July 8, 2013

Registrant

Mr. William H. Howard

104 So. Glenwood Avenue

Aldan, PA 19018-4016

Email address

Whoward123@comcast.net

#1
I, THE TREASURER THE STATE OF NEW JERSEY, DO HEREBY
CERTIFY THAT

DAVID S. BEASLEY
612 TIMBER CREEK CONDOS
LINDENWOLD NJ 08021

DID ON THE 7TH DAY OF MARCH A.D. 2003 FILE IN THIS
DEPARTMENT

SERVICE MARK

MARK REG NUM : 21286

THE EBONYS

ENTERTAINMENT/SINGING GROUP

CLASSIFICATION GROUP : SERVICES

CLASS : 041 EDUCATION AND ENTERTAINMENT

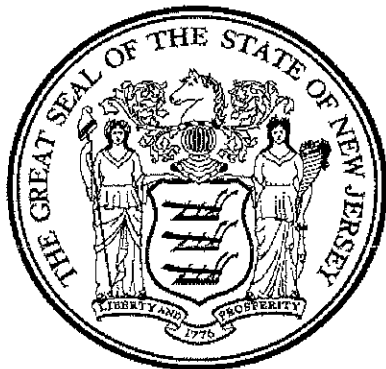
RENEWAL DATE: 03/19/2013

EXPIRATION DATE: 03/07/2018

DATE OF FIRST USE IN NEW JERSEY: 01/01/1969

DATE IN USE ELSEWHERE: 01/01/1969

AS BY THE STATUTES OF THIS STATE REQUIRED.



IN TESTIMONY WHEREOF, I HAVE
HEREUNTO SET MY HAND AND AFFIXED
MY OFFICIAL SEAL AT TRENTON, THIS
19TH DAY OF MARCH
A.D. 2013 .

Andrew P Sidamon-Eristoff
State Treasurer

Certificate Number: 127767183

Verify this certificate online at

http://www1.state.nj.us/TYTR_StandingCert/JSP/Verify_Cert.jsp

I, THE TREASURER THE STATE OF NEW JERSEY, DO HEREBY
CERTIFY THAT

DAVID S. BEASLEY
612 TIMBER CREEK CONDOS
LINDENWOLD NJ 08021

DID ON THE 7TH DAY OF MARCH A.D. 2003 FILE IN THIS
DEPARTMENT

SERVICE MARK
MARK REG NUM : 21286

THE EBONYS
ENTERTAINMENT/SINGING GROUP

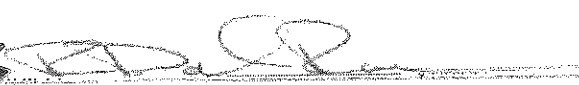
CLASSIFICATION GROUP : SERVICES
CLASS : 041 EDUCATION AND ENTERTAINMENT

RENEWAL DATE: 04/17/2008
EXPIRATION DATE: 03/07/2013
DATE OF FIRST USE IN NEW JERSEY: 01/01/1969
DATE IN USE ELSEWHERE: 01/01/1969

AS BY THE STATUTES OF THIS STATE REQUIRED.

IN TESTIMONY WHEREOF, I HAVE
HEREUNTO SET MY HAND AND AFFIXED
MY OFFICIAL SEAL AT TRENTON, THIS
17TH DAY OF APRIL
A.D. 2008.




R. David Rousseau
State Treasurer

I, THE TREASURER THE STATE OF NEW JERSEY, DO HEREBY
CERTIFY THAT

DAVID S. BEASLEY
612 TIMBER CREEK CONDOS
LINDENWOLD NJ 08021

DID ON THE 7TH DAY OF MARCH A.D. 2003 FILE IN THIS
DEPARTMENT

SERVICE MARK
MARK REG NUM : 21286

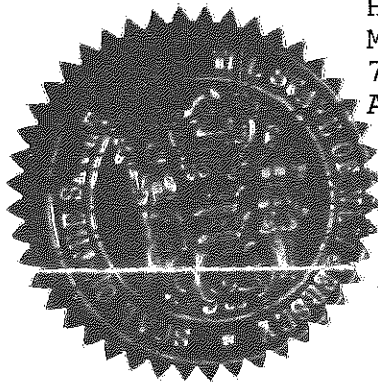
THE EBONYS
ENTERTAINMENT/SINGING GROUP

CLASSIFICATION GROUP : SERVICES
CLASS : 041 EDUCATION AND ENTERTAINMENT

REGISTRATION DATE: 03/07/2003
EXPIRATION DATE: 03/07/2008
DATE OF FIRST USE IN NEW JERSEY: 01/01/1969
DATE IN USE ELSEWHERE: 01/01/1969

AS BY THE STATUTES OF THIS STATE REQUIRED.

IN TESTIMONY WHEREOF, I HAVE
HEREUNTO SET MY HAND AND AFFIXED
MY OFFICIAL SEAL AT TRENTON, THIS
7TH DAY OF MARCH
A.D. 2003.



John E. McCormac

John E. McCormac, CPA
State Treasurer

**Octagon Development Group Entertainment
Leasing Contract**

This management contract is hereby set forth between two parties.
Lynn Gross DBA Octagon Development Group and David Beasley Owner
of The fabulous Ebony's.

AGREEMENT:

This agreement will read as follows: Lynn Gross representing Octagon Development Group will lease the management rights of the group known as, The Fabulous Ebony's a.k.a The Ebony's from the Owner, David Beasley, and will be entitle to book and manage the group in all entertainment events for the purpose of profit. Earnings from all events will be managed, controlled and distributed by Lynn Gross, representing Octagon Development Group.

TERMS:

This contract will last for a period of thirty-six months (36), beginning on the first day of monetary acquisition of the first of two installments.


Each of the two installments will be issued in the amount of Seventy Five Hundred Dollars (7500.00) bringing to an agreed upon total of \$15,000.00.

Owner David Beasley will agree to accept the first payment of \$7500.00 on or before December 1, 2004 and will accept a second payment February 5, 2005.

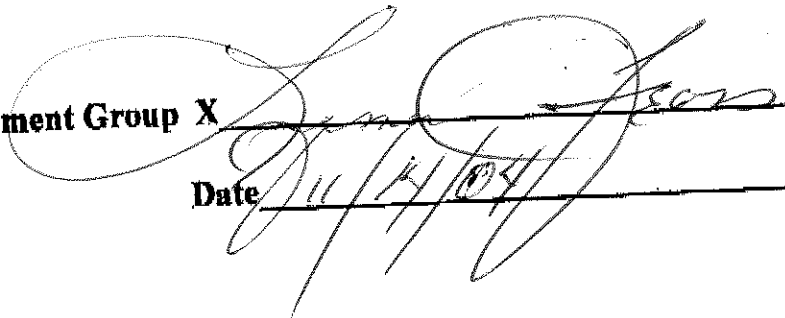
Owner David Beasley will agree to an extension of 25 days on the 2nd installment, if Lynn Gross DBA Octagon Development, can not produce 2nd installment of \$7500.00 by February 5, 2005. This extension will be automatic, but for the sum of an additional, cost of \$500.00 due to Owner David Beasley on the day of February 5th, 2005.

Lynn Gross, DBA, Octagon Development Group, Will assume all responsibilities and Liabilities for the management of the group during the 36 months lease period. David Beasley will not be held responsible or liable for any bills, debts or cancel events incurred by The Ebonys while under this lease agreement.

**David Beasley
Owner The Ebonys**

X 
Date 11/04/04

**Lynn Gross
Octagon Development Group X**


Date 11/4/04

#3

**David S. Beasley
Leasing Contract**

This management contract is hereby set forth between Forrest Finney, Micheal Mackintosh and David S. Beasley Owner of The EBONYS Entertainment/Singing Group.

AGREEMENT:

This agreement read as follows: Forrest Finney & Micheal Mackintosh will lease the management rights of the group known as, The EBONYS a.k.a. The FABULOUS EBONYS from the Owner, David S. Beasley, and will be entitled to book and manage the group in all entertainments events for the purpose of profit. Earning from all events will be managed, controlled and distributed by Forrest Finney or Micheal Mackintosh.

TERMS:

This contract will last for a period of twelve months (12), beginning on October 1, 2007. David S. Beasley will be paid in advance the sum of Five Thousand Dollars (\$5000.00.) Two Thousand Five-Hundred Dollars (\$2500.00) in advance and the balance of Two Thousand Five-Hundred Dollars (\$2500.00) on or before April 5, 2008.

Forrest Finney and Micheal Mackintosh will assume all responsibilities and Liabilities for the management of the group during the 12 month lease period. David S. Beasley will not be held responsible or liable for any bills, debts or cancelled events incurred by The EBONYS while under this lease agreement.

DAVID S. BEASLEY
OWNER OF THE EBONYS

x David Beasley

FORREST FINNEY

x Forrest Finney

Address 441 STEVEN ST

CAMDEN NJ, 08103

MICHEAL MACKINTOSH

x Micheal Mackintosh

Sworn to and subscribed
before me this
day of Oct. 2007

Address 5581 Willows Ave

Phila PA 19143

Notarized by:

Date:

Elesha M. Johnson

**ELESHA M. JOHNSON
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 7/25/2010**

**David S. Beasley
Leasing Contract**

This management contract is hereby set forth between Forrest Finney, Michael Mackintosh and David S. Beasley, Owner of The EBONYS Entertainment/Singing Group.


AGREEMENT:

This agreement reads as follows: Forrest Finney & Micheal Mackintosh will lease the management rights of the group known as, The EBONYS a.k.a. The FABULOUS EBONYS from the Owner, David S. Beasley and will be entitled to book and manage the group in all entertainment events for the purpose of profit. Earning from all events will be managed, controlled and distributed by Forrest Finney or Michael Mackintosh.


TERMS:

This contract will last for a period of twelve months (12), beginning on October 1, 2007.

Forrest Finney and Micheal Mackintosh will assume all responsibilities and liabilities for the management of the group during the twelve (12) month lease period. David S. Beasley will not be held responsible or liable for any bills, debts or cancelled events incurred by The EBONYS while under this lease agreement.



David S. Beasley
Owner of The EBONYS

Sworn to and subscribed
before me this
2 day of Oct, 2007 

Date

ELESIA M. JOHNSON
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 7/25/2010

#4
1623 Third Ave, Suite 22A
New York, NY 10128
(212) 289-0096 - (212) 289-0686 Fax



royalty|recovery

September 14, 2010

Clarence Vaughan
728 Bentley RD
Lindenwold, NJ 08021

Dear Clarence,

Further to our discussions, I am pleased that you and your band members are considering working with Royalty Recovery, Inc. to assist you in recovering your unpaid royalties. We thank you for that consideration.

To that end, enclosed please find two (2) copies of our agreement. If it is acceptable, please have the enclosed agreements signed by each member, have the attached letters signed and notarized and return the full agreements to our office for counter signature. Please make sure that each member signs both the agreement and the attached letter.

Should you have any questions, comments, concerns, etc., regarding the agreement, please do not hesitate to contact me.

Best wishes,

Sincerely,


Jeff Gandel

September 14, 2010 Letter Agreement
from The Ebonys
To ROYALTY RECOVERY
Page 1 of 7

September 14, 2010

To: Royalty Recovery, Inc.
1623 Third Ave
Suite 22A
New York, New York 10128

From: Clarence Vaughan, Jenny Holmes, David Beasley and James Tuten
p/k/a The Ebonys o/b/o themselves and the artist The Ebonys
728 Bentley RD
Lindenwold, NJ 08021

Dear Sirs:

When co-signed by you, the following will outline the agreement between Clarence Vaughan, Jenny Holmes, David Beasley and James Tuten p/k/a The Ebonys o/b/o themselves and the artist The Ebonys ("The Ebonys") and you, Royalty Recovery, Inc. ("Royalty Recovery"):

1. The Ebonys is entitled to certain royalties from his performances, compositions, sound recordings and publishing companies, which The Ebonys is not currently receiving (collectively, the "Claims").

2. The Ebonys hereby appoints in perpetuity Royalty Recovery as The Ebonys' sole authorized representative with respect to all rights in and to the Claims.

3. The Ebonys hereby authorizes Royalty Recovery to proceed, as The Ebonys' exclusive agent, with such efforts as Royalty Recovery deems reasonable and practical including, but not limited to, negotiating a resolution of The Ebonys' rights and or the Claims and/or filing an appropriate civil action in The Ebonys' name against any third party to protect The Ebonys' rights and/or the Claims. The Ebonys hereby irrevocably appoints Royalty Recovery as The Ebonys' attorney-in-fact for all matters relating to this agreement and in The Ebonys' name and to execute and deliver any documents and/or otherwise that Royalty Recovery may deem necessary. If Royalty Recovery determines that there are no other Claims to pursue or that the pursuit of certain Claims is not economically justifiable, it will notify you and this agreement will terminate with respect to those Claims not pursued. The aforementioned contract termination will not affect the rights of Royalty Recovery with respect to the Claims it has pursued, or is in the process of pursuing.

4. The Ebonys hereby grants to Royalty Recovery the sole and exclusive rights in perpetuity:

a) the right to collect any and all royalties, fees, expenses or other income currently due or becoming due, except for all royalties, fees, expenses or other income which are currently being paid to The Ebonys.

September 14, 2010 Letter Agreement
from The Ebonys
To ROYALTY RECOVERY
Page 6 of 7

David Beasley o/b/o himself and his interest in the recording artist p/k/a The Ebonys
c/o Royalty Recovery, Inc.
1623 Third Ave, Suite 22A
New York, NY 10128

Dated as of September 14, 2010

Re: Payment to David Beasley and his interest in the recording artist p/k/a The Ebonys

Ladies and Gentlemen:

1. I have hired Royalty Recovery, Inc. ("Administrator") to administrate my rights, including but not limited to my compositions, my sound recordings, my recorded performances, all of my productions, all of my publishing companies and all of my record labels.

2. Although I have previously entered into agreements which would require you to pay me directly, for the services which I rendered, I hereby request and irrevocably authorize you to make all payments due to me, as follows:

(i) All checks and statements shall be sent to Royalty Recovery, Inc. 1623 Third Ave, Suite 22A, New York, NY 10128 or their then current address.

(ii) All checks shall be made payable to Royalty Recovery, Inc.

Very truly yours,



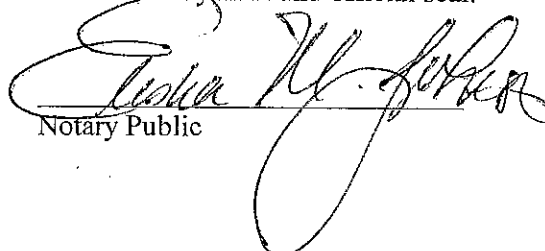
David Beasley

STATE OF NEW JERSEY
COUNTY OF CAMDEN) ss.:

On 23 SEPTEMBER 2010
DAVID BEASLEY

before me, the undersigned, personally appeared
personally known to me or proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/his/their capacity(ies), and that by his/his/their
signature(s) on the instrument, the person(s) or the entity on behalf of which the person(s) acted, executed the
instrument.

WITNESS my hand and official seal.


Notary Public

#5



Philadelphia
International
Records

August 19, 2013

RE: Artist Royalty Statements for PE 6/30/13

Dear Royalty Recipient,

Enclosed please find the Artist Royalty Statement for ***Period Ending June 30, 2013.***

For any further questions please feel free to give us a call at 215-985-0900 ext. 200.

Sincerely,
Royalty Administration

THE AVENUE OF THE ARTS

215.985.0900 • Fax 215.985.1195

309 South Broad Street • Philadelphia PA 19107

www.gamble-huffmusic.com

PHILADELPHIA INTERNATIONAL RECORDS
309 SOUTH BROAD STREET
PHILADELPHIA, PA 19107
ROYALTY STATEMENT FOR THE PERIOD ENDING JUNE 30, 2013

ROYALTOR NAME: THE EBONYS

PRIOR BALANCE

PAYMENTS

RESERVES RESTORED

OPENING BALANCE

EARNINGS

SALES-DOMESTIC
DEMON
DEMON
OTHER USES
SONY #46635003
SONY #46635052

TOTAL EARNINGS

BALANCE

RESERVES

CLOSING BALANCE

THE EBONYS
c/o DAVID BEASLEY
1801 LAUREL ROAD
LINDENWOLD, NJ 08021

10

SOUNDS OF PHILLY COMING TO CHICAGO
STEPPIN/CONCERT
EBONY'S REVUE
WITH THE
*Singing Chicago's Steppers Classics!
Life in the Country, You're the Reason Why
Forever, and many more!!!*

Special Guest Artist
Tony Strong
*(Formerly of the Intruders)
Ill Always Love My Mama
Cowboys to Girls
Together*

Introducing Chicago's Own
R&B, Soul singer & Song writer
Patrice Moncel
*Performing her New Hit Single
Side Effects*

SATURDAY
NOVEMBER 9TH 2019
8PM SHARP "SHOWTIME"

@THE LEGACY BALLROOM 8PM-UNTIL
11901 S. LOOMIS
CHICAGO, IL

Advance Donation \$20/At the Door \$25
Food & Drink sold Separately
'One Show Only'
Attire: Steppers Sharp! Music By **Ramonski Luv**
DJ Sam Chatman
Stepping Before and After the Show

Purchase Tickets at: The Look, River Oaks Mall
Angie's Boutique & Things 1604 Sibley Blvd. Cal City, IL
For Sponsor or Ticket Brokers Contact
Michael Hayes 312.434.1976 or Dave Wilkes 215.678.9619
Tickets and Info: 708.495.7264 312.434.1976
708.280.1199 877.2WILKES 773.941.6939

DIVERGENT **WILKES PRODUCTIONS**

EXHIBIT D

David S. Beasley Motion and Brief in Support of Cancellation

Cancellation No. 92057071

Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>ESTTA Tracking number: **ESTTA606210**Filing date: **05/26/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057071
Party	Plaintiff David S. Beasley
Correspondence Address	DAVID S BEASLEY 1801 LAUREL ROAD, UNIT 612 LINDENWOLD, NJ 08021 UNITED STATES dbea856005@aol.com
Submission	Opposition/Response to Motion
Filer's Name	David S. Beasley
Filer's e-mail	dbea856005@aol.com
Signature	/David S Beasley/
Date	05/26/2014
Attachments	MIS5_26_14.pdf(510720 bytes) GAMBLE.pdf(191329 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of trademark Registration No. 4170469

Cancellation No. 92057071)

Defendant)

William H. Howard dba The Ebonys)

v

Plaintiff)

David S. Beasley

MOTION TO CANCEL TRADEMARK REGISTRATION ON THE GROUNDS OF FRAUD

- Fraud in procuring a trademark registration occurs when an applicant knowingly makes false, material representations of fact in connection with the trademark application.

he bases for this Motion are set forth in the in the accompanying Memorandum. Plaintiff, David S.

Beasley hereby move this court to cancel Registration #4170469.

Dated this 26th day of May, 2014

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the forgoing (Memorandum in Support Motion to Cancel Registration) has been served on May 26, 2014, via email to William Howard, 104 S Glenwood Avenue, Aldan, PA 19018-4016 at the following email address: whoward123@comcast.net

By: David Beasley

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of trademark Registration No. 4170469

For the Mark: The Ebonys

Defendant)
William H. Howard dba The Ebonys)

v

Plaintiff)
David S. Beasley)

Cancellation No. 92057071)

MEMORANDUM IN SUPPORT

OF MOTION TO CANCEL

FACTS

Defendant, William Howard submitted an application for a Service Mark for Good and Services in the name of “The Ebonys”.

ARGUMENT

1. The Ebonys were formed in 1969 by David Beasley/plaintiff and consist of four vocalists including himself; James Tuten (deceased) Clarence Vaughn and Jennifer Holmes.
2. The Ebonys were officially signed with Assorted Music Records dba Philadelphia International Records in January 1971 and continue to receive quarterly royalty statements.
3. Defendant “William Howard” was not and is not an original member or performed on any original live recordings of The Ebonys singing/performing group.
4. David Beasley/ plaintiff registered “The Ebonys” with the State of New Jersey as Class 041 in 1997 with a twelve (12) day lapse in 2013 due to mail processing. (Mark Reg. # 21286)
5. David Beasley/ plaintiff continues to manage goods and services involving the name “The Ebonys”. David Beasley/ plaintiff manages entertainment services in the nature of live performances by vocalist; entertainment in the nature of vocal music groups; and live performances by musical groups.

6. David Beasley/ plaintiff never relinquished in writing or verbally his rights of the “The Ebonys” name to defendant, any other individual and/or group to provide profit to themselves for services or goods.
7. David Beasley/ petitioner continues with on-going projects as an original member/owner of the “The Ebonys” name.
8. David Beasley/ petitioner continues to acknowledge and receive all correspondence as it relates to royalty statements and W-9 IRS form as required for “The Ebonys”.
9. Kenneth Gamble, Chairman/President of Philadelphia International Records confirms “The Ebonys” name was derived by David Beasley/ petitioner personally. (Letter attached)

CONCLUSION

For the reasons stated above, Plaintiff’s Motion to Cancel Registration #41704698 request should be granted.

Dated this 25th day of May, 2014

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the forgoing (Memorandum in Support Motion to Cancel Registration) has been served on May 26, 2014, via email to William Howard, 104 S Glenwood Avenue, Aldan, PA 19018-4016 at the following email address: whoward123@comcast.net

By: David Beasley



**Philadelphia
International
Records**

May 12, 2014

Mr. David Beasley
The Ebonys
1801 Laurel Road – Unit 612
Lindenwold, NJ 08021

Re: The Ebonys

Dear Mr. David Beasley:

As per your request and my recollection I am confirming that the name "The Ebonys" was derive by you personally. In addition I am also reconfirming that Mr. Billy Howard was not apart of the original group and was not apart of any productions or studio recordings made with the group while you were with Philadelphia International Records.

We hope this will be of assistance to you regarding your business matters with the group and it's pertinent naming rights.

If we can be of further assistance to you, please contact us at the office

Sincerely,

Kenneth Gamble
Chairman/President
Philadelphia International Records

THE AVENUE OF THE ARTS

215.985.0900 • Fax 215.985.1195

309 South Broad Street • Philadelphia PA 19107

www.gamble-huffmusic.com



Philadelphia
International
Records

March 3, 2014

Dear Royalty Participant:

Please note that the Philadelphia International Records Music Catalog has been officially acquired by Sony Music Entertainment. As a result, Sony Music in the future will be handling and processing your royalty statements starting this year. Therefore, please note that **PIR's Period Ending June 30, 2014 Royalty Statement Accounting will be the final accounting** rendered to you by Philadelphia International Records. **Any future statements will be issued by Sony Music Entertainment.**

In the coming months we will be providing to you additional pertinent contact information regarding future communications with Sony Music Entertainment's Royalty Division.

Also please note as we update our records to facilitate a smooth transition, please find attached a W-9 form for you to complete and mail back to us at the address below or via email at **royalty@gamble-huffmusic.com**. This process will also allow Sony to continue issuing accurate name, address and tax id information related to your ongoing Period Ending Royalty Statements.

The PIR Organization is very excited about this historic move and is confident that it will be a benefit to all participants in the music catalog.

On behalf of Philadelphia International Records, Messrs. Kenneth Gamble and Leon Huff, our Executive Office and our Royalty Team, we thank you for being a part of the PIR Family and the great and historic "Sound of Philadelphia" Catalog.

Sincerely,
Royalty Administration

The Avenue of The Arts
215-985-0900 – Fax 215-985-1195
309 S. Broad Street – Philadelphia, PA 19107
www.gamble-huffmusic.com – www.tsopsoulradio.com

Form **W-9**
(Rev. August 2013)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)
DAVID BEASLEY

Business name/disregarded entity name, if different from above
THE EBONY'S

Check appropriate box for federal tax classification:
☒ Individual/sole proprietor ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate
☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____
☐ Other (see instructions) ▶ _____

Exemptions (see instructions):
Exempt payee code (if any) _____
Exemption from FATCA reporting code (if any) _____

Address (number, street, and apt. or suite no.)
1801 LAUREL ROAD UNIT 612

City, state, and ZIP code
LINDENWOLD, NJ 08021

Requester's name and address (optional)

List account number(s) here (optional):

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

1	4	4	-	4	0	-	1	3	3	7
---	---	---	---	---	---	---	---	---	---	---

Employer identification number

		-							
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Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below), and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here Signature of U.S. person ▶ *David D. Beasley* Date ▶ *3-12-14*

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. The IRS has created a page on IRS.gov for information about Form W-9, at www.irs.gov/w9. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

EXHIBIT E

David S. Beasley's Final Brief

Cancellation No. 92057071

Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>ESTTA Tracking number: **ESTTA624503**Filing date: **09/01/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057071
Party	Plaintiff David S. Beasley
Correspondence Address	DAVID S BEASLEY 1801 LAUREL ROAD, UNIT 612 LINDENWOLD, NJ 08021 UNITED STATES dbea856005@aol.com
Submission	Brief on Merits for Plaintiff
Filer's Name	David S. Beasley
Filer's e-mail	dbea856005@aol.com
Signature	/David S. Beasley/
Date	09/01/2014
Attachments	petition for cancellation9_1_14.pdf(672882 bytes) 9_1_14SUPPORTDOC.pdf(124809 bytes)

“IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD,”

In the Matter of trademark Registration No. 4,170,469

For the Mark: The Ebonys

Petitioner

David S. Beasley
1801 Laurel Road Unit 612
Lindenwold, NJ 08021

V.

Registrant

William H. Howard
104 S. Glenwood Avenue
Aldan, PA 19018-4016

Cancellation No. 92057071

AMENDED PETITION TO CANCEL A TRADEMARK REGISTRATION.

David Beasley the petitioner believes that he will be damaged by the above-identified registration, and hereby petitions to cancel the same.

The Grounds for Cancellation are as follows:

Fraud

- *Fraud in procuring a trademark registration occurs when an applicant knowingly makes false, material representations of fact in connection with the trademark application.*

Facts

Defendant, William Howard submitted an application for a Service Mark for Good and Services in the name of “The Ebonys”

1. William Howard the registrant has known David Beasley the petitioner more than thirty-five year and did knowingly apply for a trademark registration making false material representations.
2. The Ebonys were formed in 1969 by David Beasley/petitioner and consist of three vocalists including himself; James Tuten (deceased) Clarence Vaughn and Jennifer Holmes.
3. The Ebonys were officially signed with Assorted Music Records dba Philadelphia International Records in January 1971 David Beasley/petitioner receives quarterly royalty statements and all

correspondence for distribution to original members.

4. Registrant was not and is not an original member or performed on any original live recordings of The Ebonys singing/performing group.

5. David Beasley/petitioner registered "The Ebonys" trademark with the State of New Jersey as Class 041 in 1997 and continues to maintain its current status.

6. David Beasley/petitioner continues to manage goods and services as "The Ebonys". David Beasley/petitioner manages entertainment services in the nature of live performances by vocalist; entertainment in the nature of vocal music groups; and live performances by musical groups. David Beasley/petitioner continues with on-going projects as the creator and original member/owner of the "The Ebonys" name.

7. David Beasley/petitioner never relinquished to William Howard/registrant in writing or verbally the rights of the "The Ebonys" name; or to any other individual and/or group .to provide profit to themselves for services or goods.

CONCLUSION

For the reasons stated above, Petitioner Motion to Cancel Registration #41704698 request should be granted.

By: David S. Beasley
Petitioner

Date: September 1, 2014

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the forgoing has been served on September 1, 2014, via email to William Howard, 104 S Glenwood Avenue, Aldan, PA 19018-4016 at the following email address: whoward123@comcast.net

By: David S. Beasley

David S. Beasley



July 2014

DAVID BEASLEY
THE EBONYS
1801 LAUREL ROAD UNIT 612
LINDENWOLD NJ 08021

Dear Royalty Participant,

Enclosed please find a copy of your December 2013 period end royalty statement.

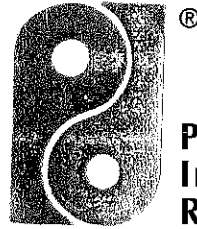
Please be advised that if you are due royalties and currently receive a royalty payment by check, your check will be mailed separately from this royalty statement. You can also sign-up for free direct deposit of future payments into any U.S. bank account. This form can be downloaded at <http://hub.sonymusic.com/royaltyinformation/docs/ach.pdf>.

If you have any questions, please contact the Sony Music Entertainment Royalty Helpdesk at the contact information provided below.

Kind Regards,

SONY MUSIC ENTERTAINMENT

Contact	: Royalty Department
Email	: royalty.statements@sonymusic.com
Telephone	: 1 201 777 3448
Fax	: 1 201 777 3047



**Philadelphia
International
Records**

May 24, 2014

Mr. David Beasley
The Ebonys
1801 Laurel Road – Unit 612
Lindenwold, NJ 08021

Dear Mr. Beasley,

In 2004, the Phillies honored Kenneth Gamble and Leon Huff for their legendary work in the music industry, as well as their overall contribution to the City of Philadelphia. During the 2004 Sound of Philadelphia celebration, we established an annual award in their honor: **The Phillies Gamble and Huff Community Partnership Award**. Past honorees include Teddy Pendergrass, Patti Labelle, Boyz II Men, The Delfonics, Jerry Butler, Dee Dee Sharp, and Chubby Checker.

This year we are pleased to announce that we will be honoring **you as a member of the Legendary The Ebonys, The Three Degrees, Bob Pantano – 98.1 WOGL Radio, Lois Fernandez – Founder and Creator of ODUNDE, Inc.** with the 2014 Phillies Gamble and Huff Community Partnership Award for your endless dedication and generosity in your hometown of Philadelphia. This year the celebration, formerly known as The Sound of Philadelphia Celebration, will be a part of the **African American Heritage Night – Presented by The Sound of Philadelphia and Gamble and Huff**. We are asking each honoree to perform one or two songs on the field as part of the awards ceremony. **Honorees will need to provide their own tracks**. The award will then be presented on-field by Mr. Gamble and Mr. Huff along with a member of the Phillies team.

The celebration will take place on **Wednesday June 25, 2014**. It is also, in part, a celebration of Black Music Month. This event is a blending of two of America's favorite obsessions – baseball and music. Below are the details and times for the event:

Location:

- Citizens Bank Park – On Field
- Philadelphia, PA

Date and Time:

- Wednesday June 25, 2014
- Approx 5:45 p.m.

THE AVENUE OF THE ARTS

215.985.0900 • Fax 215.985.1195
309 South Broad Street • Philadelphia PA 19107
www.gamble-huffmusic.com

Sound Check Time/Rehearsal Times:

To be determined by project coordinators Tony Kauffman and Gwen Gamble.

Promotion

Please note that honorees may be asked to assist in promoting the event through radio and television interviews.

Tickets

Each honoree will be given a small limited number suite tickets to use for their own guests. **The names of guests must be given to us prior to the game as there will be a VIP list of persons allowed into the suite.**

A detailed itinerary will be sent to you by June 16, 2014. If there are any questions, please feel free to contact G [REDACTED]

We hope you accept this honor and we look forward to celebrating with you!

Warmest Regards,



Charles B. Gamble
Executive Vice President
Philadelphia International Records